Supreme Court, U.S.
FILED

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No.

In The Supreme Court Of The United States
October Term, 1993

C. William Garratt,
Petitioner.

v.

Eddie M. Morris, Edsel Morris,
and Donna Piotrowski,
Respondents,

Petition For Writ Of Certiorari To The Michigan Supreme Count

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QUESTIONS PRESENTED FOR REVIEW

1.

WHETHER A CITIZEN/LAWYER'S RIGHTS TO DUE PROCESS, FREE EXPRESSION AND ACCESS TO THE COURTS ARE VIOLATED WHEN HE IS SANCTIONED UNDER A STATE'S COURT RULES WHICH DO NOT SPECIFICALLY PROHIBIT THE CONDUCT FOR WHICH HE IS SANCTIONED AND WHICH CONDUCT CONSISTS SOLELY OF REPRESENTING HIS CLIENT AND FILING PAPERS WHICH WERE NEVER IDENTIFIED AS SANCTIONABLE UNDER THOSE COURT RULES.

2.

WHETHER A CITIZEN/LAWYER'S RIGHTS TO DUE PROCESS AND ACCESS TO THE COURTS ARE VIOLATED WHEN HE IS SANCTIONED UNDER A STATE'S COURT RULES FOR ALLEGEDLY SIGNING "PLEADINGS" IN A CASE, BUT IN FACT HAD NEVER SIGNED A PLEADING IN THAT CASE AND THE ALLEGEDLY OFFENDING "PLEADINGS" WERE NEVER IDENTIFIED BY THE TRIAL COURT OR STATE APPELLATE COURTS, INCLUDING THE STATE'S HIGHEST COURT.

3.

WHETHER A STATE COURT RULE FOUND BY THE STATE'S HIGHEST COURT TO PROHIBIT CERTAIN OTHERWISE LEGITIMATE EXPRESSIVE CONDUCT IS VOID FOR VAGUENESS WHEN IT CONTAINS NO EXPRESS OR IMPLIED PROHIBITION AGAINST SUCH CONDUCT.

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LOWER COURT OPINIONS

Bechtold v. *Morris*, 443 Mich. 105, 503 NW2d 654 (1993), *reh'g denied*, (1993).[1]

[1]Although Elizabeth A. Bechtold was a party to the proceedings below, it is Petitioner's belief that Ms. Bechtold has no interest in the outcome of this Petition. Pursuant to Rule 12.4 of the Rules of the Supreme Court of the United States, Petitioner hereby requests that Elizabeth A. Bechtold not be deemed a party in this Court.

JURISDICTIONAL STATEMENT

1. Petitioner seeks review of the August 3, 1993 Opinion of the Michigan Supreme Court and of that Court's September 14, 1993 Order denying Petitioner's request for rehearing.

2. Jurisdiction is conferred upon this Supreme Court pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS RELIED UPON

Petitioner relies upon the First Amendment to the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Petitioner also relies upon Section 1 of the Fourteenth Amendment to the United States Constitution:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTE RELIED UPON

Petitioner relies upon 28 U.S.C. §1257(3):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Petitioner further relies upon Michigan Court Rules 1.101, 2.110(A), 2.113(A) and 2.114, the text of which and relevant Notes thereto are set out in Appendix "D", *infra*.

STATEMENT OF THE CASE

In 1989, Michigan Court Rule ("MCR") 2.114,[1] the Michigan equivalent of FRCivP 11 ("Rule 11"), stated:

> **RULE 2.114 SIGNATURES OF ATTORNEYS AND PARTIES; VERIFICATION; EFFECT; SANCTIONS**
>
> **(A) Verification.**
>
> (1) Except when otherwise specifically provided by rule or statute, a pleading need not be verified or accompanied by an affidavit.
>
> (2) If a pleading is required or permitted to be verified, it may be verified by
>
> (a) oath or affirmation of the party or of someone having knowledge of the facts pleaded; or
>
> (b) including the following signed and dated declaration: "I declare that the statements above are true to the best of my information, knowledge, and belief".
>
> In addition to the sanctions provided by subrule (E), a person who knowingly makes a false declaration under subrule (A)(2)(b) may be found in contempt of court.
>
> **(B) Signature Requirement.** Every pleading of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the pleading.
>
> **(C) Failure to Sign.** If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader.

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[1]In 1991 MCR 2.114(D) and (F) were amended to make clear that punitive damages are not a permissible sanction.

(D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the pleading;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(3) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E) Sanctions for Violation. If a pleading is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees. The court may not assess punitive damages.

(F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

MCR 2.114(D) then apparently differed substantively from Rule 11 in only respect: sanctions could be imposed only on signers of "pleadings" that violated (D)(1), (2) and/or (3).[2] The term "pleadings" was defined elsewhere in the Michigan Court Rules to be only a complaint, a cross-claim, a counterclaim, a third-party complaint, an answer to any of the foregoing pleadings, and a reply to an answer. MCR 2.110(A).

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[2]Subrule (D) refers only to "pleadings", while Subrule (A), (B) and (C) refers to "Pleading[s], motion[s] and other paper[s]".

Like FRCivP 11 in the federal forum, MCR 2.114(D) has suffered from conflicting interpretations in the Michigan courts. In 1991, for example, a panel of the Michigan Court of Appeals first held that MCR 2.114(D) sanctions could issue for improperly signed papers other than pleadings, *Morris* v. *Detroit*, 189 Mich.App. 271, 472 NW2d 43 (1991); a year later, another panel held that such sanctions could only be imposed for "pleadings" and not motions or other papers. *Richmond Twp.* v. *Erbes*, 195 Mich.App. 210, 49 NW2d 504 (1992).

This conflict was resolved by the Michigan Supreme Court for the first time only four months ago when that Court ruled in the instant case that a Michigan lawyer could be sanctioned under MCR 2.114(D) for filing improperly signed papers other than pleadings, *Bechtold* v. *Morris*, 443 Mich. 105, 503 NW2d 654 (1993). No such authority existed in 1989, however, when the Petitioner herein briefly represented Plaintiff.

Plaintiff, a paralegal, had filed this action in April 1989 against her ex-husband, Respondent Eddie M. Morris. Plaintiff drafted, signed and filed her complaint *in pro per* and had no attorney of record when she instituted this lawsuit.

Plaintiff thereafter added as parties to this action Respondent Eddie Morris' father and sister, Respondents Edsel Morris and Donna Piotrowski. When those Respondents were added as parties, Petitioner was still not Plaintiff's attorney and had not signed or filed any papers in this matter.

On November 9, 1989 Respondents, before any discovery was taken, filed their "Motion to Strike, To Dismiss And For Sanctions" seeking dismissal of all of Plaintiff's claims. In response to that dispositive motion, Plaintiff filed, as of right, her "First Amended Complaint" and her "Response" to Defendant's dispositive motion. Again, Plaintiff signed both of those papers *in pro per*; Petitioner had still not appeared on Plaintiff's behalf and had still not signed or filed any papers in this matter.

On November 27, 1989, the trial court adjourned the hearing on Respondents' pending dispositive motion and permitted the parties to take limited discovery relating solely to whether Plaintiff had released Respondents from liability for the causes of action she alleged. While Plaintiff attempted to conduct that limited discovery, Respondents frustrated Plaintiff's efforts to obtain any discovery.

Petitioner thereafter undertook Plaintiff's representation for the limited purpose of aiding Plaintiff in obtaining discovery from Respondents, attending Plaintiff's deposition taken by Respondents, and attempting to defend Plaintiff against Respondents' voluminous motion papers.

Petitioner's representation of Plaintiff lasted less than one month. That is, Petitioner's representation of Plaintiff terminated prior to the December 18, 1989 hearing on Respondents' dispositive motion for summary disposition and for sanctions. Plaintiff's new counsel appeared at that hearing.

At that hearing, the trial court summarily dismissed Plaintiff's pleadings and awarded sanctions against Plaintiff and Petitioner, jointly and severally, in the amount of $11,500. Although Petitioner was permitted to address the Court with respect to whether sanctions should be imposed against him, no argument was entertained as to the amount of such sanctions.

The trial court's December 18, 1989 "Order Re Sanctions" states that sanctions were imposed against Plaintiff and Petitioner for their improper signing of *pleadings*. Appendix "C-1".

Petitioner, however, never signed any pleadings in this matter. MCR 2.110(A).

By stipulation between Plaintiff and Respondents (to which Petitioner did not consent), the trial court subsequently dismissed all sanctions against Plaintiff. Thus, Petitioner, who did not sign or file Plaintiff's purportedly frivolous pleadings, and who represented Plaintiff for less than one month regarding limited matters, was left alone to bear the entire burden of the $11,500 sanctions award.

Petitioner thereafter took a timely appeal of right to the Michigan Court Of Appeals and argued that, because he did not sign any pleading, let alone frivolous pleadings, the trial court erred in imposing sanctions against him. Petitioner's appeal also asserted, among other grounds, that the trial court's imposition of sanctions violated his federal constitutional rights, thereby raising the federal questions sought to be reviewed in the instant Petition.

Realizing that they faced certain reversal, Respondents changed their tack in the Michigan Court Of Appeals and there argued that the award of sanctions against Petitioner should be upheld because Petitioner signed non-pleadings (*i.e.*, still unspecified motions and affidavits) that, albeit truthful, supported the pleadings signed by Plaintiff herself. Despite the fact that Respondents' new assertions had never been raised, briefed or argued in the trial court, the Michigan Court Of Appeals adopted Respondents' reasoning and held, in pertinent part, as follows:

> The facts of the instant case indicate that while [Petitioner] may not have specifically signed the Complaint or First Amended Complaint, he signed various [truthful] motions and affidavits in support of these frivolous complaints and represented Plaintiff at various depositions and at the summary disposition hearing, thereby subjecting himself to the provisions of MCR 2.114. (emphasis supplied).

Appendix "B-2". Petitioner was, therefore, essentially sanctioned for "representing" Plaintiff. That is, Petitioner was not sanctioned for signing frivolous pleadings or for filing frivolous motions or affidavits. Rather, Petitioner was sanctioned for representing Plaintiff at her deposition and for signing truthful, yet still unidentified, motions and affidavits in support of pleadings signed by Plaintiff.

Because MCR 2.114 does not provide for sanctions for representing a party, and because that rule, on its face, does not render sanctionable the signing of non-pleadings, Petitioner sought leave to appeal to the Michigan Supreme Court. Petitioner argued in his Application for leave to appeal that, even if he could be subjected

to sanctions for the signing of "improper" motions and affidavits, he was denied due process of law because no court had ever indicated *what* motion or affidavit signed by him was not well-grounded in law or fact or interposed for an improper purpose. MCR 2.114(D)(1), (2) and (3).

While the Michigan Supreme Court originally denied Petitioner's Application for leave to appeal, that Court, on Petitioner's motion for reconsideration, issued a published Opinion holding that a person who *files* an improperly signed paper (even if it is not a pleading or signed by the person filing) may be subjected to sanctions. Appendix "A-2". The Michigan Supreme Court did not, however, address Petitioner's constitutional arguments, identify the "improperly signed paper" attributable to Petitioner, or address if or why $11,500 was "compensatory" for whatever Respondents did in response to whatever Petitioner did improperly.

Petitioner's subsequent request for rehearing was denied by Order dated September 14, 1993. Appendix "A-4".

Thus, while this matter was used as a vehicle for announcing a new principle of Michigan jurisprudence, that principle, as applied in this case, denied Petitioner his rights to due process of law and free speech. That is, if Petitioner is to be sanctioned for filing or signing in 1989 allegedly improper non-pleadings, he is at least entitled to know what parts of what papers were allegedly offensive and to defend himself. Absent such basic information, Petitioner is denied a meaningful opportunity to respond to the allegations against him in violation of his constitutional rights. And to punish Petitioner for "representation" of a client or legitimate expressive conduct on the basis of a court rule which does not expressly prohibit such conduct denies Petitioner the rights secured to him by the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

I.

PETITIONER WAS DENIED DUE PROCESS OF LAW WHEN, WITHOUT ANY MEANINGFUL OPPORTUNITY TO BE HEARD, HE WAS SANCTIONED FOR FILING UNSPECIFIED MOTIONS AND AFFIDAVITS.

The Fourteenth Amendment to the United States Constitution declares that no state shall "deprive any person of life, liberty or property without due process of law". The fundamental embodiment of the right to due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Matthews* v. *Eldridge*, 424 US 319 (1976). Thus, an opportunity for a hearing before a competent and impartial tribunal upon proper notice is an essential element of due process. *Parratt* v. *Taylor*, 451 US 527 (1981).

Petitioner's right to due process of law has been repeatedly violated in this case, both substantively and procedurally. First, the trial court issued an Order assessing sanctions against Petitioner for "having signed pleadings [sic] that this Court has determined contain false and scandalous allegations". But, in fact, as this Court can see from the list of each paper signed by Petitioner in this matter, compiled in Appendix "E", Petitioner had not signed any pleading. The meaninglessness of Petitioner's "opportunity" on December 18, 1989 is demonstrated by the trial court's deaf ear to the *undisputed* fact that Petitioner never signed any pleading and the trial court's abject failure and effective refusal to permit Petitioner to address the contention that the amount of sanctions assessed against him were unreasonable, *e.g.*, not a function of whatever expense Respondents incurred in responding to Petitioner's allegedly improper (albeit still unspecified) conduct.

Next, the Michigan Court Of Appeals affirmed the award of

sanctions against Petitioner based on grounds never raised in or addressed by the trial court. Specifically, that intermediate appellate court held that Petitioner, who had been sanctioned by the trial court for purportedly signing pleadings that he never signed or authored, could be sanctioned under MCR 2.114(D) for improperly signing papers other than pleadings. That appellate court, however, effectively refused to identify, and did not—because it could not—identify any specific paper signed by Petitioner that was, in and of itself, sanctionable.

Similarly, the Michigan Supreme Court affirmed the sanctions award against Petitioner without ever identifying the purportedly improperly signed motions and affidavits filed by Petitioner that supposedly warranted sanctions against him.

Petitioner has, therefore, been repeatedly denied an opportunity to be heard regarding the propriety of the basis and amount of sanctions against him. Specifically, Petitioner is entitled to know what it was that he purportedly filed that warranted sanctions. *See, e.g., Coltrade International, Inc.* v. *U.S.*, 973 F.2d 128, 131 (2d Cir. 1992)(specific findings should identify the particular papers signed by counsel). Furthermore, once those papers are identified, Petitioner is entitled to an opportunity to rebut allegations regarding the impropriety of filing those papers and to challenge the consequential expense allegedly incurred by Respondents.

Absent such an opportunity, Petitioner is denied his right to due process of law.

Thus, if the instant case is allowed to stand unchanged, Michigan courts will be permitted to impose sanctions for the "filing" of improperly signed papers without ever identifying the offending paper or providing the sanctioned party with an opportunity to rebut allegations of wrongdoing and of consequential expense. Such a situation is violative of fundamental principles of due process, conflicts with countless decisions of this Court, and should be addressed by this Court.

II.

PETITIONER WAS DENIED DUE PROCESS OF LAW WHEN HE WAS SANCTIONED FOR CONDUCT THAT HE COULD NOT REASONABLY HAVE KNOWN IN ADVANCE TO BE PROHIBITED.

It is a well established principle that due process of law requires that a person know in advance what questionable behavior is prohibited. *Grayned* v. *City of Rockford*, 408 U.S. 104 (1972). The reason for such a rule is clear: in order for a person to be deprived of life, liberty, or property, he must first have reasonable prior notice that the conduct in which he is engaged is prohibited.

The application of this legal principle to the sanctions arena is logical. Sanctions, like criminal penalties, punish the offender for specified conduct that is known to be prohibited. Just as the law does not punish a person for conduct that was not prohibited at the time the conduct occurred, the law should not sanction an attorney for conduct that the attorney could not reasonably have known to be prohibited.

Petitioner was sanctioned for "representing" Plaintiff and for purportedly filing or signing in 1989 unspecified, but allegedly improper, motions and affidavits. Assuming, *arguendo*, that Petitioner did improperly sign and file motions and affidavits in 1989, Petitioner—like all Michigan lawyers and judges—had no knowledge or notice in 1989 that the mere representation of a party, or, for that matter, filing or signing of motions, affidavits or other non-pleadings could result in sanctions under the applicable Michigan Court Rule.

The pertinent Michigan Court Rule states in relevant part as follows:

> **(D) Effect Of Signature.** The signature of an attorney or party, whether or not the party is represented by an attorney,

constitutes a certification by the signer that

(1) he or she has read the pleading;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(3) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E) Sanctions For Violation. If a ***pleading*** is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees. The court may not assess punitive damages.

MCR 2.114(D) and (E) (emphasis supplied). The foregoing rules clearly speak in terms of pleadings and do not address any other papers, which are addressed solely by MCR 2.114(C). Thus, the rule, on its face, did not appear in 1989 to permit sanctions for the filing or signing of anything other than pleadings.

Yet, in its August 3, 1993 Opinion, the Michigan Supreme Court ruled, for the first time, that a lawyer could be sanctioned under MCR 2.114 for filing or signing improperly signed papers other than pleadings. Prior to that ruling, but not until after the trial court's 1989 unwarranted imposition of sanctions against Petitioner, a split of authority had arisen in the Michigan Court Of Appeals on this issue. That is, while one panel of that Court held that sanctions could issue for improperly signing papers other than pleadings, *Morris* v. *Detroit*, 189 Mich.App. 271, 472 NW2d 43 (1991), a later panel held that such sanctions could not be imposed

for such an act. *Richmond Twp.* v. *Erbes*, 195 Mich.App. 210, 49 NW2d 504 (1992).

Thus, while Petitioner was purportedly sanctioned for filing or signing improperly signed motions and affidavits in 1989 (although such "offending" papers have yet to be identified), a reasonable person could not have known in 1989 that such actions were sanctionable under MCR 2.114. Indeed, after 1989, Michigan appellate panels first addressed—and split over—this issue, leading to a resolution by the Michigan Supreme Court in 1993.

Because Petitioner could not in 1989 have reasonably known that "representation", "filing" or signing of non-pleadings was sanctionable, Petitioner's right to due process of law was violated—by sanctioning him in 1989 for conduct that was not prohibited by law until later dates.

To permit this result to stand unexamined is to condone that which is squarely at odds with the fundamental constitutional safeguards this Court has consistently protected.

III.

PETITIONER WAS DENIED DUE PROCESS OF LAW BECAUSE THE AWARD OF SANCTIONS AGAINST HIM WAS AFFIRMED WITHOUT ANY CONSIDERATION OF PETITIONER'S ALTERNATIVE ARGUMENTS.

A party who is entitled to appeal, but who is prevented from doing so, is deprived of the right to due process of law. *Chapman* v. *Texas*, 242 F.Supp. 378 (D.C. Tex. 1965).

The Michigan Court Of Appeals, on Petitioner's appeal as of right, effectively refused to address Petitioner's various alternative arguments that established the impropriety of the award of sanctions against him. By way of illustration and not limitation, those alternative arguments included the following:

(a) The trial court made no specific findings of fact concerning either what in Plaintiff's pleadings violated MCR 2.114(D) or what Petitioner specifically did—other than represent Plaintiff—to warrant sanctions against Petitioner.

(b) Plaintiff's Complaint and First Amended Complaint alleged numerous uncontested factual allegations, and other genuine factual allegations were supported by affidavits signed by six independent witnesses based upon their personal knowledge; even if dismissal of Plaintiff's pleadings were not improper, an issue that Plaintiff never pursued, sanctions were unwarranted given cognizant legal theories and supporting affidavits of fact.

(c) Respondents failed to demonstrate any obligation on their part to pay attorney fees for their legal representation in this matter[3] and, therefore, failed to prove what expense was "reasonably necessary" to respond to Petitioner's alleged, but unspecified, misconduct.

(d) Defendants-Appellees failed to prove mitigation of their purported damages.

(e) The trial court failed to hold any evidentiary hearing or make any fact findings necessary to reach the legal conclusions that MCR 2.114(D)(1), (2) or (3) were violated, let alone what specifically the violation was.

(f) Sanctions were inappropriate merely because some or all of Plaintiff's claims were subject to a waivable affirmative defense, i.e. Plaintiff's alleged release of the liability of Respondent Eddie M. Morris.

A conclusion favorable to Petitioner on any one of those issues

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[3]Respondent Eddie Morris was represented *in pro per* and by Ken McConnell. Respondents Edsel Morris and Donna Piotrowski were represented by Kenneth J. Morris, who is Edsel's brother and Donna's uncle. In arguing the Motion for sanctions on December 18, 1989, counsel Ken McConnell conceded that his hourly rate of $250 "is grossly exorbitant..." Transcript of December 18, 1989 hearing at p. 134. Appendix C-6 at p. C-6.4.

would have resulted in the reversal of the award of sanctions against Petitioner.

The Michigan Court Of Appeals' failure and effective refusal to address those substantive arguments of Petitioner destroyed Petitioner's appellate rights and, thus, denied Petitioner his right to due process of law.

Thus, where the right to appeal exists, the appellate court must hear and decide the alternative, dispositive arguments raised by an appellant in order to protect that party's right to due process of law. An appellate court's affirmance in the absence of considering all dispositive arguments of an appellant is a denial of access to the courts, a constitutional right.

IV.

THE TRIAL AND APPELLATE COURTS' ACTIONS VIOLATED PETITIONER'S FIRST AMENDMENT RIGHTS AND CREATE AN IMPERMISSIBLE CHILLING EFFECT ON LEGITIMATE EXPRESSION.

Litigation itself is a form of expression protected by the First Amendment to the United States Constitution. *In re Halkin*, 598 F.2d 176 (D.C. Cir. 1979). The violation of that federally protected right in the instant case has two prongs: Petitioner has been harmed not only in his role as an advocate, but also in his role as a litigant, given that Respondents' request for sanctions sought and resulted in damages from Petitioner himself. In reviewing the instant Petition, then, this Court should be mindful that the state courts' conduct complained of impacted not only Petitioner's client's right of access to the courts, but Petitioner's right of access to the courts as well.

This right of access to the courts is "deeply embedded" in federal constitutional law. *People* v. *Carter*, 678 F.Supp. 1484 (D.

Colo. 1986). *See also Gulf, Colorado & San Francisco Railway* v. *Ellis*, 165 U.S. 150 (1897). It is subsumed under the First Amendment right to petition the government for redress of grievances, but is also derived from the due process clause of the Fifth and Fourteenth Amendments and the privileges and immunities clause of the Fourteenth Amendment. *Simmons* v. *Dickhaut*, 804 F.2d 182 (1st Cir. 1986).

While there is no constitutional right of access to the courts to prosecute actions that are frivolous or malicious, *Tripati* v. *Beaman*, 878 F.2d 351 (10th Cir. 1989), the harm visited upon Petitioner does not dissipate even if it is assumed, *arguendo*, that Plaintiff's Complaint, First Amended Complaint and other pleadings were frivolous or scandalous. So, this Petition transcends the issue of whether or not any pleadings or papers were truly sanctionable, and goes instead to the question of whether Petitioner was afforded the procedural and substantive safeguards which are constitutionally compelled in order to protect fundamental rights. The Michigan Court Of Appeals and Michigan Supreme Court have effectively ignored those safeguards on the irrationality that sanctions were properly assessed because some unidentified papers somehow violated MCR 2.114(D). Clearly, the procedures employed and the substantive results of those procedures fall far short of that which is constitutionally compelled.

The right of access to the courts is substantive, rather than procedural, and its exercise can be shaped and guided by the State but cannot be obstructed regardless of the procedural means employed. *Morello* v. *James*, 810 F.2d 344 (2nd Cir. 1987). Put in other terms, "if the Federal Constitution prohibits a State from taking certain action 'regardless of the fairness of the procedures used to implement them,' the constitutional violation is complete as soon as the prohibited action is taken". *Daniels* v. *Williams*, 474 U.S. 327, 328 (1986)(Stevens, J., concurring)(citations omitted).

It accordingly follows that, regardless of whether Petitioner were deemed to technically have been afforded the opportunity for a hearing before the imposition of sanctions, this window dressing of

"the fairness of the procedures used" does not absolve the state courts of their violations of Petitioner's fundamental rights through the state courts' repeated failures to specify exactly what papers Petitioner was being punished for having signed and how compensatory damages equalled $11,500.

Similarly, if the intermediate appellate court provided a veneer of fairness by appearing to consider Petitioner's appeal, that court obstructed Petitioner's access to the courts by affirming the award of sanctions on the basis of grounds never raised in or addressed by the trial court. To compound the injury, that same intermediate appellate court also failed to address the alternative, dispositive arguments advanced by Petitioner.

And, the Michigan Supreme Court added insult to injury by ratifying that result, and then compounded the injury by punishing Petitioner in 1993 for yet unspecified behavior which occurred in 1989 and which Petitioner could not have known then was sanctionable.

Perhaps the State trial and appellate courts rationalized their results by concluding that (Petitioner's valid alternative dispositive arguments notwithstanding) the imposition of sanctions against someone is a permissible resolution of this dispute—even if that someone bears no culpability—in light of the courts' interest in curbing the proliferation of Plaintiff's allegedly frivolous litigation. However, in fashioning a remedy to stem the flow of frivolous litigation, courts must take great care not to unduly impair a litigant's, even a lawyer's, constitutional right of access to the courts. *Urban* v. *United Nations*, 768 F.2d 1497 (D.C. Cir. 1985). No such care was taken by the trial court in this matter, nor by the Michigan Court Of Appeals or the Michigan Supreme Court. This Court should review this decision lest state courts' desires to curb what is deemed to be frivolous litigation override their constitutional obligation to safeguard fundamental rights of citizens and lawyers alike.

Review of the Michigan Supreme Court's decision is also warranted to prevent the "chilling effect" which would necessarily

follow were that decision permitted to stand. As interpreted by the Michigan Supreme Court, MCR 2.114(D) "forbids...the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application". *Zwickler* v. *Koota*, 389 U.S. 241 (1967). Given that the effect of this case—if uncorrected—would be to chill the legitimate expression of litigants and their counsel as well, the dangers of permitting it to stand should be readily apparent, and this Court should grant certiorari.

V.

THE MICHIGAN SUPREME COURT'S INTERPRETATION OF MCR 2.114(D) VIOLATED PETITIONER'S RIGHT TO DUE PROCESS AND FREEDOM OF SPEECH BY IGNORING THE MAXIM THAT EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS.

The Michigan Supreme Court's decision in this case turned on its conclusion that the Court of Appeals correctly applied MCR 2.113(A) to MCR 2.114(D) and (E). 443 Mich. at 109. However, MCR 2.113(A) states only:

> **(A) Applicability.** The rules on the form, captioning, signing, and verifying of pleadings apply to all motions, affidavits, and other papers provided for by these rules.

The notes following MCR 2.114 suggest that "[a]lthough the rule uses the term 'pleading', it also applies to other papers". This is not an authoritative construction of the rules, however, as the Note to MCR 1.101 specifically disclaims:

> The notes that follow each rule were prepared by the Supreme Court staff to assist the reader in identifying the substantive changes that the rules make from prior Michigan practice. **They have not been approved by the Supreme Court, and**

should not be considered an authoritative construction of the rules. (emphasis added).

As a matter of due process, had the Michigan Supreme Court intended MCR 2.113(A) to apply to the sanctions provisions of MCR 2.114, it would necessarily have had to have so specified. The maxim that *"expressio unius est exclusio alterius"*, *see, e.g.*, *People* v. *One 1941 Ford 8 Stake Truck*, 159 P.2d 641, 642 (Cal. 1945), is particularly apposite in this case, where the unwarranted holding that MCR 2.113(A) applies to the sanctions provisions of MCR 2.114 without expressly so stating operates to trample fundamental rights. The Michigan Supreme Court's interpretation of MCR 2.114 is repugnant to the United States Constitution.[4]

---

[4]Pursuant to Rule 29.4(c) of the Rules of the Supreme Court of the United States, this Petition for a Writ of Certiorari has been served upon the Attorney General for the State of Michigan in that 28 U.S.C. §2403(b) may be applicable.

CONCLUSION

This simple case deserves this Court's attention for a number of compelling reasons, and the subtlety of those reasons should not obscure the gravity of the harm. The amount in controversy may not be large, and Petitioner's pecuniary loss would not be devastating if the decision sought to be reviewed were to stand. But the issues at stake go to the very bedrock of our federalism, as fundamental due process rights have been ignored and rights to free expression chilled.

The highest court of Michigan has ratified and expanded a series of decisions by its lower courts which never satisfied basic constitutional requirements.[5] In the context of the First and Fourteenth Amendments, as this Court is well aware, even "almost" is not acceptable. The result-oriented decision which may seem to advance the State's interest in curbing frivolous litigation at the expense of federally-protected rights should not go unreviewed.

---

[5]The trial judge implicitly acknowledged that his resolution of the sanctions issue skirted the necessary hearing requirements and was the product of guesswork:

> And I ordered a certain — I cut them [the sanctions] way down, primarily because *I didn't want to have a hearing* on every item. And I cut it down so much that if they do come in, they could *probably* at least make out a prima facie case for substantially more than what the Court ordered.

Transcript of February 23, 1990 Hearing at p. 14. *See* Appendix C-8 at p. C-8.10 (emphasis added).

Perhaps it was the trial judge's recognition of these fatal shortcomings which led him to advise Petitioner's counsel at a later hearing that Petitioner "may want to go to the U.S. Supreme Court before this [case] is over". *See* Transcript of March 23, 1990 Hearing at p. 17, Appendix C-9, at p. C-9.11.

REQUEST FOR RELIEF

Based upon the foregoing, Petitioner respectfully requests that this Court issue an appropriate Writ of Certiorari to the Michigan Supreme Court.

Respectfully submitted,

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GARRATT LAW FIRM
Attorneys for Petitioner
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Suite 375
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(810) 645-1450

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APPENDIX A-1
A-1.1
Michigan Supreme Court Order, 12/2/92

ORDER

Entered: December 2, 1992

Michigan Supreme Court
Lansing, Michigan

Michael F. Cavanagh
Chief Justice

Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

94029
& (50)
(54)
(58)
(61)

ELIZABETH A. BECHTOLD,
Plaintiff,

v

SC: 94029
COA: 127013, 129292
LC: 89-909989-CZ

EDDIE M. MORRIS, EDSEL MORRIS, and DONNA PIOTROWSKI,
Defendants–Appellees,

v

C. WILLIAM GARRATT,
Respondent–Appellant.

On order of the Court, the application for leave to appeal, the motions to remand, and the motions for sanctions are considered, and they are DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

71124

[seal of the Michigan Supreme Court – Lansing]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

/d/ December 2, 1992 /s/ Corbin R. Davis
Clerk

APPENDIX A-2

A-2.1

Michigan Supreme Court Per Curiam Opinion, 8/3/92

BECHTOLD v MORRIS

[105]Docket No. 94029. Decided August 3, 1993. On application by the respondent for leave to appeal, the Supreme Court, in lieu of granting leave, affirmed the judgments of the Court of Appeals and the circuit court.

Elizabeth A. Bechtold brought an action in the Wayne Circuit Court against Eddie M. Morris, her former spouse, and others. The complaint and amended complaint were signed by the plaintiff alone. Later she was represented by C. William Garratt, who signed and filed papers on her behalf. The court, Charles Kaufman, J., dismissed the case and imposed sanctions under MCR 2.114, finding that the papers filed by the plaintiff and her lawyer contained false and scandalous allegations stated for the improper purpose of harassment and vexation, that the papers were not well founded in fact, and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and ordered both the plaintiff and her lawyer to pay sanctions. Later, the court directed that the sanctions be paid by the lawyer alone. The Court of Appeals, MURPHY, P.J., and CAVANAGH and CONNOR, J.J., affirmed in an unpublished opinion per curiam (Docket Nos. 127013, 129292). The Supreme Court denied leave to appeal, 441 Mich 887 (1992). Garratt seeks reconsideration of that denial.

In an opinion per curiam, signed by Chief Justice CAVANAGH, and Justices BRICKLEY, BOYLE, RILEY, GRIFFIN, and MALLETT, the Supreme Court *held*:

Sanctions may be imposed under MCR 2.114 against a lawyer who files an improperly signed paper, even if it is not a pleading. The rules pertaining to the form, captioning, signing, and verifying of pleadings apply to all motions, affidavits, and other papers provided for by the court rules.

Affirmed.

Justice LEVIN would deny reconsideration.

C. William Garratt, in propria persona.

Morris & Doherty (by *E. Michael Morris*, in propria persona).

APPENDIX A-2
A-2.2
Michigan Supreme Court Per Curiam Opinion, 8/3/92

443 MICH 105

[106]PER CURIAM. Under MCR 2.114, the circuit court imposed sanctions on a lawyer representing the plaintiff. Despite the attorney's argument that sanctions can be ordered only against a person who files a "pleading" as defined in MCR 2.110(A), the Court of Appeals affirmed. We likewise affirm, because the rules on the signing of pleadings apply to all motions, affidavits, and other papers provided for by the court rules. MCR 2.113(A).

I

In April 1989, the plaintiff sued her former spouse. Later, she filed an amended complaint in which she named her former spouse's father and sister as codefendants.

The complaint and first amended complaint were signed by the plaintiff alone. No lawyer's signature appeared on these papers. Later, however, she was represented by attorney C. William Garratt,[1] who signed and filed papers on her behalf.

The plaintiff's pleadings contained numerous allegations of misconduct on the part of the three codefendants. To a great extent, however, the plaintiff's claims concerned matters that had been resolved in the divorce action between the plaintiff and her former spouse. The defendants therefore moved for summary disposition, and for the imposition of sanctions under MCR 2.114.

The circuit court dismissed this suit, and imposed sanctions under MCR 2.114. The court ex-

[107]plained that the papers filed by the plaintiff and her lawyer "contain[ed] false and scandalous allegations, stated for the improper purpose of harassment and vexation ...." The court also found that the papers "were not well founded in fact and/or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law."

---

[1]Mr. Garratt was the plaintiff's employer. Her ex-spouse is a lawyer who was formerly in practice with Mr. Garratt. Before the plaintiff filed this suit, Mr. Garratt had filed in Oakland Circuit Court a complaint against the plaintiff's ex-spouse; the complaint contained many of the allegations found in the present suit. That suit was later dismissed.

APPENDIX A-2
A-2.3
Michigan Supreme Court Per Curiam Opinion, 8/3/92

BECHTOLD v MORRIS

The circuit court ordered the plaintiff and her lawyer to pay sanctions to the defendants in the total amount of $11,500. Later, the court modified its order to direct that the sanctions be paid by the lawyer, and not personally by the plaintiff.[2]

Mr. Garratt appealed to the Court of Appeals, which affirmed the imposition of sanctions.[3] This Court later denied leave to appeal. 441 Mich 887 (1992).

The plaintiff's lawyer, Mr. Garratt, has moved for reconsideration of the order in which we denied leave to appeal.

II

The principal question raised in the motion for reconsideration is whether sanctions under MCR 2.114 can be imposed against a lawyer who has not signed a "pleading" as defined in MCR 2.110(A).[4]

[108]This question arises because MCR 2.114(D)[5] and

---

[2]The circuit court also appointed a receiver for Mr. Garratt in order to facilitate payment of the sanctions. The Court of Appeals later set aside the appointment of the receiver because "the facts of the instant case do not present an extreme case which requires the appointment of a receiver" and because Mr. Garratt had posted a $15,000 cash bond. Unpublished opinion per curiam of the Court of Appeals, decided February 7, 1992 (Docket No. 129292).

[3]Unpublished opinion per curiam of the Court of Appeals, decided February 7, 1992 (Docket No. 127013).

[4]That definitional provision states that a "pleading" means only a complaint, a cross-claim, a counterclaim, a third-party complaint, an answer to one of those four types of pleading, and a reply to an answer.

[5]Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the pleading;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E)[6] refer to pleadings, and not to other papers filed in a case. Since the plaintiff's complaint and amended complaint were filed *in propria persona*, the lawyer did not file a pleading in this case. Mr. Garratt thus argues that he is not subject to sanctions under MCR 2.114(D) and (E).

The lawyer urges adoption of the analysis found in *Richmond Twp* v *Erbes*, 195 Mich App 210, 224-225; 489 NW2d 504 (1992). There, the Court of Appeals agreed that sanctions under MCR 2.114(D) and (E) can be applied only to a person who has filed a "pleading," as defined in MCR 2.110(A).

In other opinions, however, the Court of Appeals has recognized that MCR 2.113(A) provides that "[t]he rules on the form, captioning, signing, and verifying of pleadings apply to all motions, affidavits, and other papers provided for by these rules." For that reason, sanctions can be imposed against a lawyer who files an improperly signed paper, even if it is not a pleading. *Morris* v *Detroit*, 189

[109]Mich App 271, 280; 472 NW2d 43 (1991). See also *Warden* v *Fenton Lanes, Inc*, 197 Mich App 618, 625-627; 495 NW2d 849 (1992);[7] *People* v *Herrera*, 199 Mich App 425, 427; — NW2d — (1993).[8]

---

[6]Sanctions for Violation. If a pleading is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees. The court may not assess punitive damages.

[7]*Warden* was authored by Judge MCDONALD, who concurred in *Richmond Twp*. He stated in *Warden* that "upon a more thorough examination of the issue as presented in this case, I believe the *Richmond* case wrongly decided this issue." 197 Mich App 627, n 2.

[8]Though recognizing the correct disposition, the *Warden* and *Herrera* panels were obliged to follow *Richmond Twp*. See Administrative Order No. 1990-6, 436 Mich lxxxiv; Administrative Order No. 1991-11, 439 Mich cxliv; Administrative Order No. 1992-8, 441 Mich, pamphlet 2, p lii.

APPENDIX A-2
A-2.5
Michigan Supreme Court Per Curiam Opinion, 8/3/92

BECHTOLD v MORRIS

The Court of Appeals correctly decided the present case. After quoting MCR 2.114(D) and (E), the Court properly applied MCR 2.113(A), as explained in *Morris*. 189 Mich App 280. We therefore grant the motion for reconsideration, and affirm the judgments of the Court of Appeals and the circuit court.[9] MCR 7.302(F)(1).

CAVANAGH, C.J., and BRICKLEY, BOYLE, RILEY, GRIFFIN, and MALLETT, J.J., concurred.

LEVIN, J. I would deny reconsideration.

---

[9]We have considered the other arguments offered by Mr. Garratt in his motion for reconsideration, and we find that they do not merit discussion. The motion for consolidation with *Warden*, now pending in this Court on an application for leave to appeal that does not concern sanctions under MCR 2.114, is denied.

APPENDIX A-3
A-3.1
Michigan Supreme Court Order, 9/7/93

ORDER

Entered: September 7, 1993

Michigan Supreme Court
Lansing, Michigan

Michael F. Cavanagh
Chief Justice

Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

94029 (80)

ELIZABETH A. BECHTOLD,
Plaintiff,

v

SC 94029
CoA 129292
LC 89-909989-CZ

EDDIE M. MORRIS, EDSEL MORRIS, and DONNA PIOTROWSKI,
Defendants–Appellees,

v

C. WILLIAM GARRATT,
Respondent–Appellant.

On order of the Chief Justice, the motion by respondent-appellant for leave to file papers instanter is considered and, it appearing that appellant's motion for rehearing was filed August 26, 1993, IT IS HEREBY ORDERED that the time for filing for rehearing by respondent–appellant be extended to August 26, 1993.

[seal of the Michigan Supreme Court – Lansing]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

/d/ September 7, 1993 /s/ Jacqueline B. MacKinnon
[/s/ Deputy] Clerk

APPENDIX A-4

A-4.1

Michigan Supreme Court Order, 9/14/93

ORDER

Entered: September 14, 1993

Michigan Supreme Court
Lansing, Michigan

Michael F. Cavanagh
Chief Justice

Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

Rehearing No. 292

ELIZABETH A. BECHTOLD,
Plaintiff,

v

SC 94029
CoA 129292
LC 89-909989

EDDIE M. MORRIS, EDSEL MORRIS, and DONNA PIOTROWSKI,
Defendants–Appellees,

v

C. WILLIAM GARRATT,
Respondent–Appellant.

In this cause a motion for rehearing is considered and, it is hereby DENIED.

[seal of the Michigan Supreme Court – Lansing]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

/d/ September 14, 1993 /s/ Corbin R. Davis

Clerk

APPENDIX B-1
B-1.1
Michigan Court of Appeals Order, 2/28/90

COURT OF APPEALS, STATE OF MICHIGAN

ORDER

ELIZABETH A BECHTOLD v C WILLIAM GARRATT

Docket #126143
L.C.# 89-909989-CZ

Thomas J. Brennan
Presiding Judge
Harold Hood
Maureen P. Reilly
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The Court further orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

The Court further orders that the motion for stay is DENIED.

[seal of the State of Michigan Court of Appeals]

A true copy entered and certified by Norbert G. Jaworski, Chief Clerk, on

/d/ February 28 1990
Date

/s/ Norbert G. Jaworski
Chief Clerk

APPENDIX B-2
B-2.1
Michigan Court of Appeals Per Curiam Opinion, 2/7/92

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH A. BECHTOLD,
Plaintiff,

February 7, 1992

v

Nos. 127013; 129292

EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI,
Defendants-Appellees,

v

C. WILLIAM GARRATT,
Respondent-Appellant.

Before: Murphy, P.J., and Cavanagh and Connor, J.J.

PER CURIAM.

This case is a consolidated appeal. In Docket No. 127013, respondent C. William Garratt appeals as of right the trial court's imposition of $11,500 in sanctions against Garratt under MCR 2.114 and MCR 2.625. In Docket No. 129292, Garratt appeals as of right the trial court's appointment of a receiver over his assets.

Plaintiff Elizabeth Bechtold, as a secretary and paralegal, and defendant Eddie Morris, as an attorney, were employed together at a small law firm operated by Garratt. In August, 1981, plaintiff and Morris married, and in April 1987, they divorced. Following their divorce, plaintiff and Morris continued to work together with Garratt until August 1988, when Morris began employment elsewhere.

On April 20, 1989, plaintiff filed a complaint against Morris, alleging that, although their divorce was concluded in April 1987, Morris engaged in wrongful acts and omissions both during and after the divorce which were contrary to his express promises and

that he interfered with plaintiff's employment relationship with Garratt.

On November 17, 1989, plaintiff filed an amended complaint, adding Edsel Morris, Eddie Morris' brother, and Donna Piotrowski, Eddie Morris' sister, as defendants. This complaint set forth many of the same allegations as the April 20, 1989 complaint and also contained allegations that Eddie Morris violated portions of the Elliott-Larsen Civil Rights Act and that defendants conspired together to defraud plaintiff of her interests in some marital assets. Both the initial complaint and the first amended complaint were signed by plaintiff in pro per.

Defendants subsequently moved for summary disposition under MCR 2.116(C)(7), MCR 2.116(C)(8), and MCR 2.116(C)(10), and sanctions against plaintiff and Garratt under MCR 2.114. Following a hearing held December 18, 1989, the trial court granted defendants' summary disposition motions and imposed $11,500 in sanctions against plaintiff and Garratt jointly and severally.

On February 23, 1990, the trial court denied Garratt's motion for modification, stay, and rehearing regarding the imposition of sanctions. Additionally, on February 23, 1990, the trial court entered an order dismissing the claims against defendants and vacating the portion of the December 18, 1990 order imposing sanctions against plaintiff. This order stated, however, that the imposition of sanctions against Garratt remained in full force and effect.

On March 1, 1990, the trial court entered an ex parte order requiring Garratt to submit to a judgment debtor examination and appointing Kenneth McConnell as a receiver over Garratt's assets.

On May 11, 1990, the trial court entered an order staying the entire matter pending Garratt's appeal to this Court provided that Garratt post a $15,000 cash bond. Garratt subsequently posted this bond.

APPENDIX B-2
B-2.3
Michigan Court of Appeals Per Curiam Opinion, 2/7/92

I

Garratt first argues that because he did not sign the complaint or first amended complaint the trial court erred in sanctioning him pursuant to MCR 2.114 and MCR 2.625. We disagree.

MCR 2.114 governs the effect of the party's or attorney's signature and provides, in pertinent part:

> (D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
>
> (1) he or she has read the pleading;
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (3) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> (E) Sanctions for Violation. If a pleading is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees. The Court may not assess punitive damages.

This signature requirement is also applicable to all motions, affidavits, and other papers. MCR 2.113(A); *Morris* v *Detroit*, 189 Mich App 271, 280; 472 NW2d 43 (1991). See also Note, MCR 2.114. The trial court is required to impose an appropriate sanction against the party, the attorney, or both under MCR 2.114(E) if a document covered by MCR 2.114 is signed in violation of the rule. *Morris, supra*, 281.

The facts of the instant case indicate that while Garratt may not have specifically signed the complaint or first amended complaint, he signed various motions and affidavits in support of these frivolous complaints and represented plaintiff at various depositions and at the summary disposition hearing, thereby subjecting himself to the provisions of MCR 2.114. See *Morris, supra*, 280.

Additionally, we find Garratt's reliance upon *Pavelic & LeFlore* v *Marvel Entertainment Group*, 493 US ___, 107 L Ed 2d 438, 110 S Ct 456 (1989) for the proposition that Garratt can only be sanctioned if he signed the complaints misplaced. In *Pavelic*, the United States Supreme Court held that Rule 11 of the Federal Rules of Civil Procedure, which is similar to MCR 2.114, allows for sanctions only against the signer of frivolous pleading, motions, or other papers in violation of Rule 11, and not the law firm from which that individual is a member. *Pavelic, supra*, 443-445. Here, while Garratt did not sign the complaints, he did sign motions and affidavits in support of plaintiff's frivolous claims and clearly represented her.

II

Garratt argues that even if the provisions of MCR 2.114 applied to the instant case, sanctions were inappropriate because plaintiff's first amended complaint satisfied MCR 2.116(C)(8) and the pleadings requirements of MCR 2.114(D). We disagree.

A trial court's finding of fact that MCR 2.114, MCR 2.625(A)(2), and MCL 600.2591; MSA 27A2591 were violated will not be reversed on appeal unless clearly erroneous. *Morris, supra*, 281-282; *In re Goehring*, 184 Mich App 360, 367-368; 457 NW2d 375 (1990). Here, with respect to defendant Eddie Morris, the trial court found that plaintiff's claims against him raised matters that were disposed of by their divorce judgment and property settlement. We do not believe that this finding was clearly erroneous. With respect to defendants Edsel Morris and Donna Piotrowski, the trial court found that plaintiff's claims against them were frivolous because they were added as defendants only in the

hope that discovery would prove that they were conspiring with Eddie Morris to defraud plaintiff. We also do not believe that this finding was clearly erroneous.

III

Garratt also contends that the trial court erred in imposing $11,500 in sanctions because Kenneth McConnell, Eddie Morris, and Kenneth Morris, attorneys for defendants, failed to prove that the hours they expended were reasonably necessary. We disagree.

In imposing sanctions under MCR 2.114, the trial court may require a party to pay the opposing party's reasonable expenses and attorney fees incurred. MCR 2.114(E); *Morris, supra*, 281. McConnell submitted an affidavit stating that he spent twenty-two hours on the instant case. Kenneth Morris submitted an affidavit stating that he spent fifty hours on the instant case. Eddie Morris submitted an affidavit indicating that he spent 141.6 hours on the instant case. A total of 213.60 hours were therefore spent on the instant case by these attorneys. Garratt himself, however, for the purpose of supporting his argument that he adequately researched the merits of plaintiff's complaints, submitted an affidavit stating that he spent more than 250 hours from November 1989 to December 1989 on the instant case.

We find that in light of the fact that Garratt spent more than 250 hours on the instant case, the 213.6 hours spent by McConnell, Eddie Morris, and Kenneth Morris were not unreasonable.

IV

Garratt next argues that the trial court erred in imposing sanctions under MCR 2.114 and MCL 600.2591; MSA 27A.2591 because it failed to make specific findings of fact. We disagree and believe that the December 18, 1989, order imposing sanctions and the trial court's statements at the summary disposition hearing sufficiently sets forth the trial court's findings of fact.

V

Garratt next argues that the trial court erred because it imposed sanctions jointly and severally against plaintiff and Garratt without any division of responsibility. We find this argument to be without merit. This Court has repeatedly upheld sanctions by a trial court which were imposed jointly and severally under MCR 2.114(E) against a party and its attorney. See, e.g., *Porter* v *United Shirt Distributors, Inc*, 176 Mich App 145; 438 NW2d 893 (1990); *Lloyd* v *Avadenka*, 158 Mich App 623, 628; 405 NW2d 141 (1987).

VI

Garratt next asserts that the imposition of sanctions under MCL 600.2591; MSA 27A.2591 violated his due process rights because he did not have notice until the summary disposition hearing of defendants' request for sanctions under MCL 600.2591; MSA 27A.2591, and that he therefore did not have adequate time to prepare a response to this request. We disagree.

Defendants initially moved for sanctions under "MCR 2.114". MCR 2.114(F) specifically states that in addition to sanctions under other subrules to MCR 2.114, a party may be sanctioned under MCR 2.625(A)(2). MCR 2.625(A)(2), in turn, specifically states that a party may be sanctioned under MCL 600.2591; MSA 27A.2591 for pleading a frivolous claim or defense. Pursuant to MCR 2.114(F) and MCR 2.625(A)(2), Garratt had notice that sanctions could be imposed under MCL 600.2591; MSA 27A.2591.

Moreover, since sanctions were imposed under both MCR 2.114 and MCR 2.625(A)(2), it makes little difference if Garratt was given adequate notice of defendants' request for sanctions under MCL 600.2591; MSA 27A.2591 since both MCR 2.114 and MCR 2.625(A)(2) state that the court "shall" impose sanctions where a party pleads a frivolous claim or defense. See *Contel Systems Corp* v *Gores*, 183 Mich App 706, 710, n 2; 455 NW2d 398 (1990).

VII

Garratt also argues that the sanctions were punitive in nature and thus should not have been imposed. This argument is wholly without merit. The trial court specifically stated at a hearing held February 23, 1990, that the sanctions were not punitive.

VIII

On February 23, 1990, plaintiff and defendants entered into a "MUTUAL RELEASE AND SETTLEMENT AGREEMENT" in which plaintiff and defendants released and discharged each other from any and all claims and judgments. The trial court then entered an order on February 23, 1990, vacating the portion of the December 18, 1989, order imposing sanctions against plaintiff. This order, however, specifically stated that the imposition of sanctions against Garratt was still enforceable. Garratt now argues that because plaintiff was relieved from paying sanctions he should likewise be relieved or have his portion reduced. We disagree.

Garratt relies upon MCL 600.2925(d)(b); MSA 27a.2925(4)(b) of the Revised Judicature Act regarding joint tort-feasors for the proposition that he should not have to pay sanctions:

> When a release or a covenant not to sue or not to enforce judgment is given in good faith to 1 of 2 or more persons liable in tort for the same injury or the same wrongful death:
>
> (b) It reduces the claim against the other tort-feasors to the extent of any amount stipulated by the release or the covenant or to the extent of the amount of the consideration paid for it, whichever amount is the greater.

Garratt's reliance upon MCL 600.2925(d)(b); MSA 27A.2925(4)(b) is misplaced. MCL 600.2925(d)(b); MSA 27A.2925(4)(b) specifically refers to "tort-feasors" and persons "liable in tort". In this case, there are no "tort-feasors" or persons "liable in tort". Rather, the present case involves the imposition of sanctions for a frivolous claim. Moreover, the trial court's order

vacating the imposition of sanctions against plaintiff was a modification of the original order imposing sanctions and specifically stated that the order imposing sanctions remained in full force and effect as to Garratt.

IX

Garratt next asserts that because defendants contend that Garratt engineered and wrote the initial complaint and first amended complaint for plaintiff, Garratt was actually an agent of plaintiff, the principal, and that since the principal was absolved of sanctions, he should likewise be absolved of sanctions. We disagree and find that the facts of the instant case suggest no principal-agent relationship whatsoever between plaintiff and Garratt.

X

Garratt next argues that the trial court erred in appointing a receiver over his assets in an attempt to enforce the sanctions. We agree.

The power to appoint a receiver is inherent in courts of equity. A receiver's primary purposes is to preserve property and to dispose of it under the order of the court. *Band* v *Livonia* Associates, 176 Mich App 95, 104; 439 NW2d 285 (1989). The appointment of a receiver, however, is a harsh remedy and should only be used in extreme cases. If less intrusive means are available, a receiver should not be appointed. Only after other approaches to enforce the trial court's orders have failed should a receiver be appointed. *Band, supra*, 105; *Wayne Co Jail Inmates* v *Wayne Co Chief Executive Officer*, 178 Mich App 634, 658-658; 444 NW2d 549 (1989). The decision of a circuit court to appoint a receiver to implement its orders will not be reversed on appeal absent an abuse of discretion. *Wayne Co, supra*, 651.

Here, the trial court imposed $11,500 on December 18, 1989. On February 23, 1990, the trial court denied Garratt's motions for modification, stay, and rehearing. Then, on March 1, 1990, without attempting any less intrusive means of collecting the sanctions,

the trial court appointed Kenneth B. McConnell as a receiver for Garratt. We believe that the facts of the instant case do not present an extreme case which requires the appointment of a receiver. Moreover, since Garratt posted a $15,000 cash bond, a receiver is no longer necessary. We therefore vacate the portion of the March 1, 1990, order appointing Kenneth McConnell as a receiver.

Since we have vacated the portion of the March 1, 1990, order appointing a receiver, Garratt's remaining issues regarding a receiver need not be addressed.

XI

As a result of Garratt's representation of a plaintiff in a separate and unrelated case from the United States District Court for the Eastern District of Michigan, Kenneth McConnell held $5,146.20 in escrow for the benefit of Garratt & Evans, P.C. In an order entered March 1, 1990, the trial court stated that this $5,146.20 was to be paid to defendants by McConnell as partial satisfaction of Garratt's obligation to pay defendants sanctions. Garratt now argues that the trial court erred in ordering that this fund be paid to defendants because this fund belonged to the law firm of Garratt & Evans, P.C., and not Garratt personally.

While we have no opinion regarding the merits of Garratt's argument, we believe that since Garratt posted at $15,000 cash bond to satisfy the sanction requirement, there is no need for this fund to be paid to defendants as partial satisfaction. We therefore vacate this portion of the March 1, 1990 order.

In Docket No. 127013, we affirm the trial court's imposition of sanctions against Garratt.

In Docket No. 129292, we vacate the portions of the March 1, 1990, order appointing a receiver over Garratt's assets and requiring $5,146.20 in the trust account of McConnell to be paid to defendants.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Michael J. Connor

APPENDIX B-3
B-3.1
Michigan Court of Appeals Order, 5/11/92

Court of Appeals, State of Michigan

ORDER

ELIZABETH A. BECHTOLD v EDDIE M. MORRIS

William B. Murphy
Presiding Judge
Mark J. Cavanagh
Michael J. Connor
Judges

Docket # 127013 & 129292
L.C. # 89-909989-CZ

The Court orders that the motion for rehearing is DENIED.

/s/ William B. Murphy
Presiding Judge

[seal of the State of Michigan Court of Appeals]

A true copy entered and certified by Ella Williams, Chief Clerk, on

/d/ MAY 11 1992
Date

/s/ Ella Williams
Chief Clerk

APPENDIX C-1
C-1.1
Trial Court Order, 12/18/89

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff,

-vs-

EDDIE M. MORRIS,
EDSEL MORRIS, and
DONNA PIOTROWSKI,
Defendants.

Case No. 89-909989-CZ

HON. CHARLES KAUFMAN

ELIZABETH A. BECHTOLD
Plaintiff, In Pro Per

KENNETH B. MCCONNELL (P17326)
Of Counsel to Eddie M. Morris

E. MICHAEL MORRIS (P31547)
Defendant, In Pro Per
2000 N. Woodward Avenue, Suite 100
Bloomfield Hills, MI 48013
(313) 645-1106

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

ORDER RE SANCTIONS

At a session of said Court,
held in Detroit, Michigan,

on /d/ DEC 18 1989

PRESENT: HON. CHARLES KAUFMAN
Circuit Judge

APPENDIX C-1
C-1.2
Trial Court Order, 12/18/89

Plaintiff having filed a Complaint and First Amended Complaint in this matter; Plaintiff and her counsel, C. William Garratt, having signed pleadings that this court has determined

[2]contain false and scandalous allegations, stated for the improper purpose of harassment and vexation; this court also having found that pleadings signed by the Plaintiff and her counsel Garratt were not well founded in fact and/or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

IT IS HEREBY ORDERED that based upon the violations by Plaintiff and her counsel, Garratt, of MCR 2.114, and also pursuant to MCR 2.625, sanctions are awarded against both Plaintiff and her counsel, jointly and severally, in the amount of $2500.00 to Kenneth McConnell and $7500.00 to Eddie Morris and $1500.00 to Ken Morris.

IT IS FURTHER ORDERED that the sanctions shall be paid within seven calendar days from the date of this order.

A TRUE COPY
JAMES R. KILLEEN
CLERK
BY /s/ R. Eldridge
Deputy Clerk

/s/ Charles Kaufman
HON. CHARLES KAUFMAN
Circuit Judge

c: MORRIS.7

APPENDIX C-2
C-2.1
Trial Court Order of Dismissal, 2/23/90

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs-

EDDIE M. MORRIS, EDSEL MORRIS,
and DONNA PIOTROWSKI,
Defendants.

Honorable Charles Kaufman
Civil Action No.
89-909989-CZ

ORDER DISMISSING CASE WITH PREJUDICE AND MODIFYING DECEMBER 18, 1989 ORDER RE SANCTIONS

At a session of said Court,
held in the City-County Building
Detroit, Michigan on
/d/ FEB 23 1990

PRESENT: HONORABLE CHARLES KAUFMAN
WAYNE COUNTY CIRCUIT JUDGE

Plaintiff and Defendants having stipulated, through their respective counsel, to entry of this Order; and this Court being advised in the premises;

IT IS HEREBY ORDERED that this action is dismissed with prejudice without costs against Plaintiff.

IT IS FURTHER ORDERED that this Court's Order Re Sanctions dated December 18, 1989 be, and hereby is, amended so as to delete any reference to Plaintiff in the preamble and ordering paragraphs; that Order shall be deemed to not apply

[2]to Plaintiff and every portion of that Order that would otherwise apply to Plaintiff is hereby vacated and held for nought insofar as it refers to Plaintiff.

IT IS FURTHER ORDERED that except as expressly modified herein, the December 18, 1989 order remains in full force and effect as to everyone other than Plaintiff Elizabeth A. Bechtold, and shall not be construed as to diminish or compromise liability or release anyone other than Plaintiff Elizabeth A. Bechtold.

/s/ Charles Kaufman
CHARLES KAUFMAN
WAYNE COUNTY CIRCUIT JUDGE

Approved as to form
and substance:

E. Michael Morris
In Pro Per

Kenneth McConnell
Co-Counsel for Defendant Eddie Morris

Kenneth J. Morris
Attorney for Defendants
Edsel Morris and Donna Piotrowski

Mark J. Kriger
Attorney for Plaintiff

A TRUE COPY
JAMES R. KILLEEN
CLERK
BY /s/ R. Eldridge Deputy Clerk

APPENDIX C-3
C-3.1
Trial Court Order, 2/23/90

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs-

Case No. 89-909989-CZ
HON. CHARLES KAUFMAN

EDDIE M. MORRIS, EDSEL MORRIS
and DONNA PIOTROWSKI,
Defendants.

C. WILLIAM GARRATT (P13858)
Attorney for Plaintiff
300 E. Long Lake, Suite 375
Bloomfield Hills, MI 48013
(313) 645-1450

E. MICHAEL MORRIS (P31547)
In Pro Per
2000 N. Woodward, Suite 100
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(313) 645-1106

KENNETH B. MCCONNELL (P17326)
Of counsel to Eddie M. Morris
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(313) 645-1710

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Piotrowski
27840 Plymouth Road
Livonia, MI 48150
(313) 425-9055

ORDER RE: 2/23/90 RULINGS

At a session of said Court, held in the Wayne County Circuit Court, City-County Building, Detroit, Michigan on

/d/ FEB 23 1990

PRESENT: HON. /s/ CHARLES KAUFMAN
CIRCUIT COURT JUDGE

APPENDIX C-3
C-3.2
Trial Court Order, 2/23/90

C. William Garratt having filed a Motion for Modification, Stay and Rehearing; Defendants

[2]having responded thereto, and having asked for an increase in sanctions due to, among other thing [sic], the continued pursuit of vexatious and spiteful litigation by C. William Garratt.

IT IS HEREBY ORDERED that Garratt's motion be, and hereby is, denied.

IT IS FURTHER ORDERED that Garratt shall *immediately* comply with this Court's Order of December 18, 1989, *forthwith, i.e.*, no later than 4:00 p.m. on February 23, 1990, and pay to Defendants and their counsel the sums referred to in the Court's Order. The Motion For Stay is hereby denied.

[3]This Court shall issue execution if either of the sums stated in this Order are not paid within the time set by the Court.

IT IS FURTHER ORDERED that statutory interest, at the judgment rate of interest, shall run on the amount of sanction amounts from the date of each order granting sanctions.

Approved as to form only

/s/ E. Michael Morris
/s/ Michael Alan Schwartz
/s/ Kenneth J. Morris

/s/ CHARLES KAUFMAN
CIRCUIT COURT JUDGE

A:10077.OR1

A TRUE COPY
JAMES R. KILLEEN
CLERK
BY /s/ R. Eldridge
Deputy Clerk

APPENDIX C-4
C-4.1
Trial Court Order, 3/1/90

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs-

Case No. 89-909989-CZ
HON. CHARLES KAUFMAN

EDDIE M. MORRIS, EDSEL MORRIS and DONNA PIOTROWSKI,
Defendants.

C. WILLIAM GARRATT (P13858)
Attorney for Plaintiff
300 E. Long Lake, Suite 375
Bloomfield Hills, MI 48013
(313) 645-1450

E. MICHAEL MORRIS (P31547)
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(313) 645-1106

KENNETH B. MCCONNELL (P17326)
Of counsel to Eddie M. Morris
2000 N. Woodward, Suite 100
Bloomfield Hills, MI 48013
(313) 645-1710

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Piotrowski
27840 Plymouth Road
Livonia, MI 48150
(313) 425-9055

ORDER FOR EXAMINATION OF JUDGMENT DEBTOR, RESTRAINING TRANSFER OF PROPERTY SUPPLEMENTARY TO JUDGMENT, AND GRANTING OTHER RELIEF

At a session of said Court, held in the Wayne County Circuit Court, City-County Building, Detroit, Michigan on
/s/ MAR 1 1990

PRESENT: HON. /s/ CHARLES KAUFMAN
CIRCUIT COURT JUDGE

APPENDIX C-4
C-4.2
Trial Court Order, 3/1/90

Upon motion of Defendants for (1) examination of Judgment Debtor pursuant to MCLA 600.6110, (2) an order

[2]restraining the transfer or disposition of assets pursuant to MCLA 600.6116, and (3) appointment of a Receiver, and execution on property pursuant to MCLA 600.6104; and with good cause otherwise appearing for the relief sought by Defendants; and the Court being advised in the premises;

IT IS HEREBY ORDERED that C. William Garratt appear before a court reporter at the offices of E. Michael Morris, P.C., 2000 N. Woodward, Suite 100, Bloomfield Hills, Michigan 48013, at 10:00 a.m. on March 6, 1990, to be examined under oath concerning property, income, assets or other means of satisfying the orders previously entered by this Court in this action; and further, C. William Garratt is hereby restrained from transferring, disposing of, or interfering with any of his property, whether now owned by him, or hereafter acquired by or becoming due him, not exempt from execution, until further order of this Court.

IT IS FURTHER ORDERED that C. William Garratt shall bring with him and produce at said examination all books, papers and records in his possession or control which have or may contain information concerning property, assets, or income.

IT IS FURTHER ORDERED that Attorney Kenneth B. McConnell be, and hereby is, appointed as Receiver for C.

[3]William Garratt with the authority to exercise his discretion to locate and/or dispose of any and all assets which may be used to

satisfy the orders previously entered.

IT IS FURTHER ORDERED that this Court directs that the sum of $5,146.20 currently held in the trust account of Kenneth B. McConnell be paid forthwith to Defendants in this matter as partial satisfaction of the Court's previous order.

/s/ CHARLES KAUFMAN
CIRCUIT COURT JUDGE

A TRUE COPY
JAMES R. KILLEEN
CLERK
BY /s/ R. Eldridge
Deputy Clerk

APPENDIX C-5
C-5.1
Trial Court Order, 5/11/90

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs-

Case No. 89-909989-CZ
HON. CHARLES KAUFMAN

EDDIE MR. MORRIS, EDSEL MORRIS
and DONNA PIOTROWSKI,
Defendants.

MARK J. KRIGER (P30298)
Attorney for Plaintiff
1028 Buhl Building
Detroit, MI 48226
(313) 963-1700

MICHAEL A. SCHWARTZ (P30938)
Of Counsel for Respondent
4000 Penobscot Building
Detroit, MI 48226
(313) 963-8080

C. WILLIAM GARRATT (P13858)
Respondent, In Pro Per
300 E. Long Lake, Suite 375
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(313) 645-1450

E. MICHAEL MORRIS (P31547)
In Pro Per
2000 N. Woodward, Suite 100
Bloomfield Hills, MI 48013
(313) 645-1106

KENNETH B. MCCONNELL (P17326)
Of counsel to Eddie M. Morris
2000 N. Woodward, Suite 100
Bloomfield Hills, MI 48013
(313) 645-1710

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Piotrowski
27840 Plymouth Road
Livonia, MI 48150
(313) 425-9055

APPENDIX C-5
C-5.2
Trial Court Order, 5/11/90

ORDER RE: 4/13/90 PRONOUNCEMENTS

At a session of said Court, held in the Wayne County Circuit Court, City-County Building, Detroit, Michigan on
/s/ MAY 11 1990

PRESENT: HON. /s/ CHARLES KAUFMAN
CIRCUIT COURT JUDGE

[2]Respondent's motions described below having duly come on for hearing on March 9, 1990 together with Defendants' Response and Objection and Respondent's Replies and supporting brief; and the Court having heard oral argument;

IT IS HEREBY ORDERED that Respondent's Motion for Approval of Stay Bond and Defendant's Objections to Proposed Bond be, and each hereby is, granted in part and denied in part; this Court hereby stays execution of this Court's 3/1/90 Order. Respondent may file a Stay Bond provided that it is as approved by this Court on March 9, 1990 without further written order or pronouncement, namley [sic] a $15,000 cash bond or a $20,000 licensed corporate surety bond; except as set forth above, the other relief sought in Respondent's aforesaid motion is denied.

IT IS FURTHER ORDERED that Respondent's Motion for Relief from "Order Re: Sanctions" and the related relief sought by Respondent at the March 9, 1990 hearing be, and hereby is, denied.

IT IS FURTHER ORDERED that Respondent's Motion to Set Aside or Modify *Ex Parte* "Order for Examination of Judgment Debtor, Restraining Transfer of Property Supplementary to Judgment, and Granting Other Relief" be, and hereby is, granted in part and denied in part. This Court's March 1,

[3]1990 "Order for Examination of Judgment Debtor, Restraining Transfer of Property Supplementary to Judgment, and Granting Other Relief" is hereby stayed in its entirety until 4:30 p.m. on

Monday, March 12, 1990; except as set forth above, Respondent's aforesaid motion is denied. In the event of affirmance by appellate courts of rulings by the trial court, the bond will be looked to as first satisfaction.

/s/ CHARLES KAUFMAN
CIRCIUT [sic] COURT JUDGE

APPROVED AS TO FORM ONLY:

/s/ Eddie M. Morris
DEFENDANT EDDIE M. MORRIS

/s/ Kenneth J. Morris / EMM w/ per
KENNETH MORRIS
ATTORNEY FOR OTHER DEFENDANTS

/s/ C. William Garratt
RESPONDENT C. WILLIAM GARRATT

A TRUE COPY
JAMES R. KILLEEN
CLERK

BY /s/ R. Eldridge
Deputy Clerk

APPENDIX C-6
C-6.1
Transcript, 12/18/89 Hearing

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff,

vs.

Civil Action No.
89-909-989-CZ

EDDIE M. MORRIS,
EDSEL MORRIS, and
DONNA PIOTROWSKI,
Defendants.

MOTION

Before the Honorable Charles Kaufman, Circuit Judge, on Monday, December 18, 1989, at 1601 City-County Building, Detroit, Michigan.

APPEARANCES:

C. WILLIAM GARRETT
MARK KRIGER
300 East Long Lake Road
Bloomfield Hills, Michigan 48013
Appearing on behalf of the Plaintiff

KEN MCCONNELL
EDDIE MORRIS
2000 N. Woodward Avenue
Suite 100
Bloomfield Hills, Michigan 48013
Appearing on behalf of the Defendant, E. Michael Morris

APPENDIX C-6
C-6.2
Transcript, 12/18/89 Hearing

KENNETH J. MORRIS
27840 Plymouth Road
Livonia, Michigan 48150
Appearing on behalf of the Defendants, Edsel Morris and Donna Piotrowski

TYPED BY:

DAVID A. CUCINELLA
Certified Court Reporter, CSMR-3614

TABLE OF CONTENTS

WITNESS:

None

EXHIBITS:

None

APPENDIX C-6
C-6.3
Transcript, 12/18/89 Hearing

...[132]that release. As far as the question of tender back, I somewhat agree with Mr. Garrett [sic] that not in all cases is it required, but this decision is not based upon a failure to tender back. I'm satisfied that she did do many acts in reliance upon this judgment, did accept some money upon reliance on this judgment and did retain other things that she got in reliance upon the judgment. So the Court would order that this case not only for the things that I just mentioned now, but for all the things that are in all the parties' briefs up to this point, I'm going to grant the motion for summary judgment as to Eddie Morris.

MR. MORRIS: Thank you, your Honor.

THE COURT: Just a minute, I'm not quite done. I'm done. This is yours, Mr. Morris.

MR. MORRIS: Thank you, your Honor. Mr. McConnell has the next motion.

MR. MCCONNELL: If it please the Court, and I know how to be briefer than my client.

THE COURT: I hope so.

MR. MCCONNELL: The matter of sanctions are now to be addressed by me. I'm handing you a two-page summary of the relevant court rule sections and also

[133]the December 1989 summary out of Calahan's Michigan Pleading of Practice. And while I'm doing that, I'm sure that the Court will grant the teaching of the just good old-fashioned memory refreshment, I'll wait until you —

THE COURT: No, go ahead, I've read it.

MR. MCCONNELL: All right. The Court has now ruled that the Plaintiff's Complaint was not properly the subject of having been investigated before it was filed. It was filed in the face of the sound release contained in the Judgment of Divorce. It offered no basis to escape from established existing law or to seek modification of established existing law that releases in court judgments being what

they say, no good faith investigation and Mr. Garrett is a party to this whole thing and has caused it to go on for six weeks, generating more than five pounds of paper and there's been nothing offered by way of the usual careful methodical homework that any person must do before they make charges of this nature. The State Legislature in the section of RJA that's cited at the end of the memorandum, has declared it to be the public policy of Michigan, binding on this Court that frivolous commands the granting of sanctions and it

[134]is defined by the people in Lansing as meaning the party's legal position devoid of arguable legal merit. Now, if you just back up and think of what you've just ruled here, you have, I think, met that standard end this welter of paper of the relief sought was dumped on you and it's all devoid of legal merit. Yesterday as we were plowing through this, because I've been tied up in more interesting matters, I saw Eddie's time records just for October and November, 140 hours. That will be coming into you, Judge Kaufman, in a solemn affidavit that you may rely on that representation for the purposes of doing what should be done here today. When that affidavit comes in, if you find that you want to back up and modify the order that I think you ought to enter today, just haul off and ex parte, shrink it down. I have only 20 hours of time on this matter, thank God. Eddie's rate when he was still with Garrett was being billed out between $125.00 and $135.00 an hour by Garrett. It's now at $150.00 with adjustments, naturally, depending on the circumstances. This kind of annoyance should be charged certainly at that rate. Mine is grossly exorbitant, $250.00, but modify it down because you must not lose sight of the community standard, the objective

[135]community standard which you must apply. You can listen to what my rate is, but modify it so it's fair. You've heard Ken Morris and I trust, he can likewise put an affidavit in showing the represented 50 hours. When you get all through, it seems to me, Eddie's comes out at about $21,000 for his 140 hours, mine might be $5,000.00, but that's a pretty heavy rate, do anything you like

with it, I don't care. Ken Morris, he's had a number of years additional experience, maybe $7,500.00 looking at around $33,000.00. Now, if you do nothing, this irritant will pop up again. Judge Gage had to put up with it up until June of this year and she's going to have to put up with a motion now to set aside the without prejudice part and award sanctions because there was not the disclosure that this bunch of stuff had been filed. It was concealed from her, concealed from us. We would not have consented but for the concealment. But that's Garrett's style, it's well known in the community of legal and I think judicial, also. I would urge that you exercise your God given judgment, award sanction, and if it's gotta be against both of them, both of them, fix a reasonable time for it to be paid, failing which the judgment becomes final and execution can issue. I guess that's all that we —

[136]you can do now. Again, I renew the — I'm handing a proposed order with copies to counsel, found it blank and an original to the Court and if you prefer waiting until you see the affidavits, go right ahead, it doesn't make a bit of difference. But whatever you do will be right. Finally — that cleans up the motion for sanctions Mr. Ken Morris may have something to say about it. I'm now handing you a proposed order with copies to Counsel to release the Eddie Morris converted monies by this Plaintiff that's sitting in your clerk's office and I have narrowed the order from the way my client prepared it last evening. He was going too far, and we've shortened it down, or struck it down to where it belongs, and it may be signed, I think, without any hearing from the other side. They converted that money, the Plaintiff did, in April — in March or April when the business was sold, put it on [sic] her own bank account, used it, then filed this silly lawsuit in April, said they were tendering it to the Court and didn't bother bringing in a court order to pay it into Court and it was your order of December the 4th, that finally got it into the Court. That's just old common law thievery and interest must be afforded. The order should be signed directing it to be paid over forthwith to Eddie, with usual

[137]interest.

MR. MORRIS: Your Honor, all I have to add is I join in the motion for sanctions. It becomes obvious that unless the motion isn't granted, Mr. Garrett is going to try to bang our heads against the wall, and spend $80,000.00 on this case, too.

THE COURT: What was the last thing — I didn't hear the last thing you said.

MR. MORRIS: If the motion isn't granted, your Honor, Mr. Garrett is going to take other measures and try to allow us — make us spend a lot more money before it's over and time. If he can't be discouraged, this will go on for an infinity.

THE COURT: Mr. Kriger?

MR. MCCONNELL: I must make one correction, I in no respect indicated this newly appearing lawyer, (inaudible words) sanctions. He just showed up and he ought to have known better, but he did and he didn't do anything other than try to help this Court a little bit within the framework. But the harm was all done by Garrett, he ought to be (inaudible) for the remedy.

MR. KRIGER: Your Honor, Mr. Garrett will speak as to the sanction motion against him. I would just like to speak on behalf of Elizabeth Bechtold.

[138]Your Honor, I believe that sanctions in this case would be wholly inappropriate. I respectfully disagree with your ruling. I believe that there was substantial evidence on the issue —

THE COURT: See that's a fate accompli. Just argue.

MR. KRIGER: I understand that, but I think it's important to understand why I don't believe that this was a vexatious lawsuit. What I — let me back just back up. I was referred to Mr. Garrett by another attorney and I came and I met with Mr. Garrett and I met with Ms. Bechtold and my first blush, as I indicated earlier to you, was this was another bitter divorce battle where the parties could just not let sleeping dogs lie. But then I said, well, let me look it over and I explored it, and I explored it —

THE COURT: You told me all that.

MR. KRIGER: And then I see — but I see affidavits from people in Garratt's Law Firm, that work at Garrett's Law Firm, and they said Mr. Morris, Eddie Morris, threatened to fire Ms. Bechtold if she didn't sign the releases. Once that fact was established in my mind, I believed that there was

[139]something to this lawsuit. Let me — and maybe I should state and maybe I don't have common sense, but I took the case on a contingency agreement because I believed that if I could get it to a jury, that I could get something from a jury. That if the jury believed that he put this woman through this kind of trauma, the suicide and everything else — attempt — and everything else that occurred, that they would award her some kind of damages. I believed there was merit to such an extent and obviously this Court disagrees as to the merit of the lawsuit, that I took it on a contingency fee. I don't believe that the Court can say that this case was completely without merit. Not when we have affidavits from people in the office that some threats made by Eddie Morris on the termination of employment. Not when we have an attorney signing an affidavit that indicates she was under complete emotional distress, wouldn't even allow us to make motions to compel interrogatories. Based — and I'm not going to talk too much longer, your Honor, based on those things, and the fact that Ms. Bechtold has been through the ringer, I believe — it would be appropriate to impose any sanctions on Miss Bechtold. If the Court has any questions, I'd

[140]be more than happy to try to answer them. I mean, she's been through enough, I don't think it would serve any purpose to impose sanctions upon her.

MR. GARRETT: First, your Honor, with regard to the request for sanctions, I believe I am correct, but I'm not sufficiently familiar with all the papers that the Court has been deluged with to be certain that I'm correct in saying that the request for sanctions is premised, according to the pleadings, on MCR 2.114(D) and (E). It

is not premised, to my recollection, upon the State Statute and to the extent that this attempt by them to amend the motion to make me respond to allegations that I could not reasonably be expected to have responded to, I object. Next, let's look at the court rules, because the court rule and the statute are different. The court rule says that sanctions may be imposed, it's purely discretionary, under circumstances where in terms of a legal sense, it's not based upon existing law or a reasonable argument for the extension modification or reversal of existing law. As to facts, the question is whether or not there was a reasonable factual investigation.

THE COURT: Let me just correct you on the one thing. You said that the Statute is discretionary.

[141]I'm sorry, you said the rule is discretionary. It's not.

Mr. Garrett: I'm sorry, I stand corrected.

The Court: The Rule says this, if a pleading is signed in violation of this Rule, the Court on motion of a party or its own initiative shall impose on the person who signed it.

Mr. Garrett: I'm sorry, I'm sorry —

The Court: No, it's mandatory — I knew it was mandatory, that's what [sic] I looked at it.

Mr. Garrett: You're right, and the distinction I should have made is that the standard for imposition are different between the Statute and the court rule and the amounts to be imposed are different under the Statute and the court rule. The Statute talks about how you compute the amount, the court rules doesn't. The court rule says that you know, you can throw somebody in jail if they — if you find that they violated 2.114(D) and (E). That is not one of the alternatives specified by the Statute, and the court rule does not specify the types of damages that the Statute does. So, first to the extent that they're attempting to modify their argument to — with reference to the Statute, I object. Second, I believe that the plethora of

[142]affidavits filed in this case establishes that there were substantial facts upon which to ground this lawsuit. Your Honor obviously has found that the lawsuit ought to be dismissed, but only after lengthy argument with regard to primarily the facts. In the course of your Honor's pronouncements, just recently, the only thing specifically that you referred to in terms of the lack of serious allegations were — according to my notes, was that you didn't there [sic] were any serious allegations about Edsel and Donna Piotrowski. Next, in determining whether or not to impose sanctions, I think you have to determine whether or not there was some basis in law or for the reasonable extension or reversal or modification in existing law on which to premise the Complaint. Your Honor, earlier today, inquired as to wasn't it the Plaintiff that cited *Vhama*. In fact, your Honor, it was your Honor that first cited *Vhama*.

THE COURT: I first cited it, but then —

MR. GARRETT: I understand.

THE COURT: — in the brief somebody else cited it.

MR. GARRET: We brought it up —

THE COURT: Sure.

[143]MR. GARRETT: — so what I am suggesting to you is, that based upon the facts that were established by the affidavits of Bechtold, Evans, Garrett, McCarthy (ph), Trepke (ph), Stuart Trepke (ph), the Pontiac Policeman, Eric McCann, Mark Haffley (ph), I think that it's difficult for the Court to conclude that there is not substantial factual basis for the Complaint. In addition, I think you also have to take into consideration the fact that due to the Defendant's refusal to make discovery and their obstruction of discovery, other facts not which we were on a fishing expedition to get but other facts which we could reasonably have obtained from them, but were not available by affidavit; were available to buttress the Complaint. So I believe that based upon the briefs that we filed in support of the case, even if we didn't support this case, even though

your Honor is well aware of the fact that you could have granted the motion for summary disposition, I think that there is ample legal authority for us to contend that there was, if not existing law, a reasonable basis for the extension, modification or reversal of existing law to allow the Complaint to exist. Next, before it slips through the cracks, let me address the, "order directing

[144]clerk to release funds forthwith and granting other releases". I have not had the chance to read the language of the other orders, but I note that it's it's [sic] rather presumptuous for the other side to presume that the Court will make certain findings that the Court hasn't expressly made. And as I now glance at the order, post order regarding sanctions, I — I see the same thing. Here the other side is presuming to know what the Court's going to conclude. I'll let you draw whatever conclusions you want with regard to the order regarding sanctions which you undoubtedly will. But please note that if you subscribe and enter the order directing the clerk to release funds forthwith and granting certain other relief, that amongst other things, you are not only finding an act of conversion occurred, which you haven't found, and which there's been no argument about, but in addition, you're ordering that the Plaintiff pay a statutory rate of interest, whatever that means. I presume they're talking about MCLA 600.6013, the judgment rate of interest, that she pay a statutory rate of interest from a date that precedes the filing of the Complaint. And in addition, by signing that order, you are, in effect, granting the Defendant Eddie Morris,

[145]a summary judgment with regard to matters that are clearly and unequivocally attested by affidavit. Are you finding, as a matter of law, and are you not finding as a matter of law if you enter that judgment, that Eddie Morris didn't breach any of the oral or written obligations that he had with regard to the Northern Michigan property? Because I suggest to you that there is no adequate basis in this record for making such a finding and that by distributing the monies to her, you are, in essence, saying that she could never have her day in Court as to whether the business or the property or their value were diminished by so much as his breaches of

written contracts, including obligations in the property settlement agreement which were not merged in the judgment. So, I suggest to you that if you are, as you obviously are, bound and determined to dismiss this case once and for all, that money that's paid to the Clerk of the Court should not go to Eddie Morris; it ought to go back to her. They are still — she is still entitled to her day in court on the question of whether or not his acts and omissions in breaching agreements concerning the Northern Michigan property caused her damages.

[146]Failure to cooperate in obtaining financing, for example. And I guess what I'm saying is, that the — under the circumstances, I think that order is far too broad. In addition, the order purports to require an accounting.

MR. MCCONNELL: I'll abandon that provision in the last paragraph of the order. I didn't want it in there and it has nothing to do with — strike that.

THE COURT: Yes, I've already stricken it.

MR. MCCONNELL: Good. We think alike.

THE COURT: (inaudible words).

MR. GARRETT: Unless Judge McConnell's statements, your Honor, be treated as the truth, let me indicate to you that contrary to Mr. McConnell's statements at the outset of today, Judge Gage not only did not impose sanctions, she expressly told Eddie Morris and Ken McConnell and me in her chambers on May 2, 1988, that she was not going to impose sanctions with regard to their allegations that they were frivolous pleadings and there is — although there was not a formal court record of that proceeding, at an appropriate time in that case, I made a written verified allegation to that effect which was not denied by them. So, in terms of whether or not

[147]sanctions should be imposed, based upon the record of that case of which I ask you to take judicial notice, I think you ought to follow Judge Gage's lead and decline to impose sanctions. Until I

know whether or not the Court intends to impose sanctions on me or Ms. Bechtold, it seems to me it would be wasting your time for me to argue further, since I don't know in what direction you're headed, if you want — if you think it's necessary that I argue the question of the amount of sanctions, I will, but I don't — there's no point in my wasting your time if you're not going to grant sanctions.

THE COURT: First, as to the proffered order directing the clerk to release funds forthwith and granting other relief, what the Court is going to do is order that the $5,439.07 which was filed, will be forthwith released to the Defendant, Eddie Morris and clerk will be directed to pay these funds. On the next paragraph, the Court has deleted certain portions of it. I'm not going to make any specific findings about conversion or anything like that, just that he was due these funds. And I'm just going to order that the Plaintiff pay to Eddie Morris interest at the Statutory rate or these funds from

[148]the date she received said funds to the date of this order. Probably nothing will happen on that aspect of the order, but I'm not going to make any finding, and I'm deleting the last paragraph of that. As far as the sanctions are concerned for bringing this lawsuit, I'm satisfied that there was a valid release, that the Plaintiff should have known about this release, her attorney should have known about this release, and so many of the things in there are just really vexatious and spiteful, and really shouldn't be the basis of bothering the Court with that kind of a lawsuit when there is by any stretch of the imagination, no intentional infliction of emotional distress which rises to the level that our Courts have defined it. I am going to order that sanctions be ordered. And the sanctions that I'm going to order are the following: To — I realize it's substantially less that the claim but I've got to take into account who's paying these sanctions and what their financial status may be. I'm going to order the following: $2,500.00 to Kenneth McConnell, $7,500.00 to Eddie Morris, and $1,500.00 to Ken Morris.

Mr. Morris: That's fine, thank you.

(Hearing concluded).

[149]REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 148, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Monday, December 18, 1989.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This /s/ 11th day of /s/ January , 1990.

APPENDIX C-7
C-7.1
Transcript, 2/2/90 Hearing

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH BECHTOLD,
Plaintiff,

vs.

Civil Action No.
89-909-989-CZ

EDDIE M. MORRIS, DONNA PIOTROWSKI, WILLIAM C. [sic] GARRATT, EDSEL MORRIS,
Defendants.

MOTION — VOLUME I

Before the Honorable Charles Kaufman, Circuit Judge, on Friday, February 2, 1990, at 1601 City-County Building, Detroit, Michigan.

APPEARANCES:

MARK J. KRIGER
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Appearing on behalf of the Plaintiff

EDDIE M. MORRIS
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Suite 375
Bloomfield Hills, Michigan 48013
Appearing in Pro Per

KENNEHT [sic] J. MORRIS
27840 Plymouth Road
Livonia, Michigan 48150
Appearing on behalf of the Defendants, Piotrowski and Edsel Morris

APPENDIX C-7
C-7.2
Transcript, 2/2/90 Hearing

[2]MICHAEL ALAN SCHWARTZ
4000 Penobscot Building
Detroit, Michigan 48226
Appearing on behalf of the Defendant, Garratt

TYPED BY:

DAVID A. CUCINELLA
Certified Court Reporter, CSMR-3614

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WITNESS:

None

EXHIBITS:

None

APPENDIX C-7
C-7.3
Transcript, 2/2/90 Hearing

[3] Detroit, Michigan

Friday, February 2, 1990

THE COURT: Bechtold versus Morris, 89-909989. Hello, Mr. Kriger.

MR. KRIGER: Good morning, your Honor.

MR. MORRIS: Good morning, your Honor.

MR. GARRATT: Good morning, your Honor.

MR. KRIGER: Your Honor, if the Court pleases, Mark Kriger on behalf of the plaintiff, Elizabeth Bechtold. Your Honor, I know the Court has spent an inordinate amount of time on this case and I'll try to be as brief —

THE COURT: Who do you represent?

MR. SCHWARTZ: Your Honor, as my appearance, Michael Alan Schwartz on behalf of C. William Garratt.

THE COURT: I'm sorry, on behalf of who?

MR. SCHWARTZ: On behalf of Mr. Garratt, on question of sanctions.

THE COURT: Well, file it with the clerk where it's supposed to be filed. I don't accept things for filing here.

MR. MORRIS: Your Honor, E. Michael Morris representing myself, in pro per. And there's a preliminary matter that needs to be addressed before oral

[4]argument begins.

MR. MORRIS: Kenneth J. Morris representing Edsel Morris [sic] Donna Piotrowski, your Honor.

MR. MORRIS: Your Honor, the preliminary matter is, under the rule, they're not entitled to oral argument. You gave us four hours —

THE COURT: Not on the rehearing they're not, absolutely.

MR. MORRIS: That's right. And you gave us four hours and you gave us a special day. And I don't think that we should be here for four more hours today.

THE COURT: Well, I never intended to hear any argument on a rehearing or modification.

MR. MORRIS: Thank you. So, there's really four issues that are up for the court as I read them. One is a stay issue, they've asked for a stay. Two is a motion, they want to file a second amended complaint. Three is our request in response to their motions for an increase in sanctions to the amount originally sought. And four is there's an order of dismissal that's floating around, they've filed objections to and filed their own proposed order. We can resolve that today. So, there's really only four issues that are up.

THE COURT: Didn't this go to the Court of

[5]Appeals; and didn't the Court of Appeals make a ruling on the stay or is that some other case?

MR. KRIGER: Some other case.

MR. MORRIS: You've got that confused —

THE COURT: I've got that confused with another case. Okay, good enough.

MR. KRIGER: Your Honor, may I — the Court has always been patient, I understand —

THE COURT: I'm going to be real patient. But let me just preference my patience with this, that I am not going to orally hear any motion for reconsideration. Now, I've made that clear.

MR. KRIGER: All right. Well, that's what I was going to ask —

THE COURT: And that's what — I am not going to hear any oral argument on it because I gave you a lot of consideration, a lot of time. I set a special day, I think; didn't I?

MR. KRIGER: You did.

APPENDIX C-7
C-7.5
Transcript, 2/2/90 Hearing

THE COURT: And I heard — and I thought — I made what I thought was a thoughtful decision. And, you know, there can be just so many times you can come back. To be deluged with all of these documents on a motion for rehearing, I think is a bit ridiculous, when I

[6]specifically said the basis of my ruling.

MR. KRIGER: Your Honor, I don't want to —

THE COURT: So, I'm going to listen to you —

MR. KRIGER: If you just give me just a minute on the sanctions as to Elizabeth Bechtold, and that's it.

THE COURT: Yeah, sure, on something like that, okay.

MR. KRIGER: Your Honor, and I'll just rely on the pleadings for everything else. As to the sanctions on Elizabeth Bechtold, your Honor, your Honor, Ms. Bechtold is a lay person and is not necessarily familiar with what's specious, what the terms of the court rules are and a sanction's order. She's a single parent. Your Honor, what is apparent from the pleadings in this case, is this is as much a battle between Garratt and Morris as Bechtold and Morris. If you look at his responsive pleadings, he simply says, "Patented tricks by William Garratt, identical tricks employed by Garratt, obvious tactic by Garratt, so on and so forth. Your Honor, Ms. Bechtold has become a pawn in this case. If he's entitled to sanctions, give him his sanctions against Mr. Garratt —

THE COURT: You represent only Bechtold?

MR. KRIGER: Only Bechtold.

[7]THE COURT: You did, at one time, represent Garratt.

MR. KRIGER: No, never.

THE COURT: Never in this case?

MR. KRIGER: Never in this case.

THE COURT: I'm sorry, I thought you represented everybody.

MR. KRIGER: No, just —

THE COURT: Okay.

MR. KRIGER: If he wants to collect the monies there from Garratt, and I think that Ms. Bechtold — this was an incredibly bitter break-up of a marriage. She — there was a suicide attempt. I've tried to negotiate a settlement —

THE COURT: (Inaudible words)

MR. KRIGER: — tried to negotiate a settlement. She's been breaking down on the telephone whenever I talked to her in the past week, cry. To give him sanctions against Ms. Bechtold is really putting salt into the wounds. And I think that if he wants to get his money and the Court feels he's entitled to it, then it should come from Mr. Garratt and Mr. Garratt only. With that, I'll stop, your Honor.

THE COURT: You've heard that legis ignorantia

[8]nominem excusat; haven't you?

MR. KRIGER: Yes, but she's a lay person, but —

THE COURT: That's why I quoted that, because it doesn't excuse a lay person.

MR. KRIGER: Well, I know. But I think that if the Court reads between the lines, this is a battle really between Garratt and Morris. That's where the sanctions ought to come, or at least reapportion them. And that's all and I'm not going to take up any more time.

THE COURT: You didn't file any pleadings yet; did you —

MR. SCHWARTZ: No, Mr. Garratt filed.

THE COURT: Your name again, I'm sorry?

MR. SCHWARTZ: Michael Schwartz, Michael Schwartz.

THE COURT: I should know who you are.

MR. SCHWARTZ: Yes, sir.

THE COURT: Very well. You didn't file any pleadings; did you?

MR. SCHWARTZ: Mr. Garratt filed pleadings for this matter.

THE COURT: Oh, and you're representing him —

[9]MR. SCHWARTZ: I am appearing for him. I was retained yesterday to appear for him today, which I am doing. Your Honor, with respect to that last situation, I'm also — I'm going to anticipate Mr. Morris' motion. Perhaps I should speak to his motion for increase of sanctions.

THE COURT: I would think so. He hasn't —

MR. SCHWARTZ: Or else I should wait until he's done to address the Court.

MR. MORRIS: Your Honor, I would be happy to go next. May I?

THE COURT: Sure.

MR. MORRIS: Your Honor, first of all, as to —

THE COURT: One second.

MR. MORRIS: Sure.

THE COURT: I just want to get things straight here. You're no longer representing yourself, Mr. Garratt?

MR. GARRATT: Well, your Honor, Mr. Schwartz's appearance is of counsel to me, so that in order to try to save a little money here and there, I periodically file pleadings on my behalf if Mr. Schwartz is unavailable to appear. But unless — for all we know, this may be the last appearance in this case, number one.

[10]But I don't intend to make — to have a speaking role at today's hearing.

THE COURT: That's what I was wondering, whether you're going to represent yourself. I was going to suggest that litigants

can sit down because I'm only going to hear from attorneys and questions of law, so the litigants can be seated.

MR. GARRATT: You don't mind if I just stand next to Mr. Schwartz because he's brand new in the case and I may need to pass a little bit of information onto him.

MR. SCHWARTZ: It would be helpful for assistance of counsel, your Honor, if he could remain in total —

MR. GARRATT: I won't (inaudible words) the Court, your Honor.

The Court: Only because you're still an attorney.

Mr. Schwartz: Okay.

THE COURT: You're still an attorney in this case, then, I guess.

MR. GARRATT: Yes.

THE COURT: I excuse only —

MR. SCHWARTZ: My role is the same, your Honor,

[11]as Mr. McConnell's for Mr. Morris. So, it's a suicide attempt situation.

THE COURT: Okay, go ahead.

MR. MORRIS: I'll try to be brief, your Honor.

THE COURT: Hopefully.

MR. MORRIS: On the motion by Mr. Kriger to absolve the plaintiff, your Honor, the violation to the rule 2.114 doesn't say — it says — it specifically says, "Either a party or a counsel."

THE COURT: Before you argue, the sanctions against Ms. Bechtold went in favor of you. Did it go in favor of your clients too?

MR. MORRIS: Yes, your Honor.

MR. MORRIS: It did your Honor. And I want to —

Mr. Morris: Joint settlement.

Transcript, 2/2/90 Hearing

THE COURT: Do you have any objection if I talk to Mr. Kriger and the two Mr. Morris' in chambers for a moment?

MR. SCHWARTZ: Fine.

THE COURT: I don't think that will affect — it might affect you. It might, possibly. But it really just has to do with Ms. Bechtold, this aspect.

MR. KRIGER: We'd be happy to talk to you, your

[12]Honor.

MR. MORRIS: I'd be happy to talk to you, your Honor.

THE COURT: But I don't want to shut them out because they're still parties to the case.

MR. MORRIS: If they don't have an objection, we —

THE COURT: If they don't have an objection, otherwise, I'd just really like to have Mr. Schwartz in because you're a principal in this thing here.

MR. GARRATT: I don't want to stand out of chambers, your Honor.

THE COURT: All right. You can come in, if you want to.

MR. GARRATT: I appreciate it.

(Hearing concluded)

[13]REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 12, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Friday, February 2, 1990.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This /s/ 25th day of /s/ May, 1990.

APPENDIX C-8
C-8.1
Transcript, 2/23/90 Hearing

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH BECHTOLD,
Plaintiff,

vs.

Civil Action No.
89-909-989-CZ

EDDIE M. MORRIS, DONNA PIOTROWSKI, WILLIAM C. [sic] GARRATT, EDSEL MORRIS,
Defendants.

MOTION — VOLUME II

Before the Honorable Charles Kaufman, Circuit Judge, on Friday, February 23, 1990, at 1601 City-County Building, Detroit, Michigan.

APPEARANCES:

MARK J. KRIGER
1028 Buhl Building
Detroit, Michigan 48226
Appearing on behalf of the Plaintiff

EDDIE M. MORRIS
200 N. Woodward Avenue
Suite 375
Bloomfield Hills, Michigan 48013
Appearing in Pro Per

KENNEHT [sic] J. MORRIS
27840 Plymouth Road
Livonia, Michigan 48150
Appearing on behalf of the Defendants, Piotrowski and Edsel Morris

[2]MICHAEL ALAN SCHWARTZ
4000 Penobscot Building
Detroit, Michigan 48226
Appearing on behalf of the Defendant, Garratt

TYPED BY:

DAVID A. CUCINELLA
Certified Court Reporter, CSMR-3614

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WITNESS:

None

EXHIBITS:

None

APPENDIX C-8
C-8.3
Transcript, 2/23/90 Hearing

[3]Detroit, Michigan

Friday, February 23, 1990

At about 11:40 a.m.

THE CLERK: Bechtold versus Morris, et al, 89-909989.

MR. SCHWARTZ: Your Honor, Michael Alan Schwartz representing C. William Garratt on the matter of sanctions.

MR. MORRIS: E. Michael Morris in pro per, your Honor.

MR. MORRIS: Ken Morris, representing Edsel Morris and Donna Piotrowski, your Honor.

THE COURT: Okay. Apparently I see, Ms. Bechtold, Mr. Kriger, your attorney, is not here. Did you want to proceed without him?

MS. BECHTOLD: Well, yeah. If he doesn't show up by the time — we've reached a settlement. I don't know what there is to discuss.

THE COURT: And you understand the settlement?

MS. BECHTOLD: Yes.

THE COURT: You've discussed it with your attorney?

MS. BECHTOLD: Yes.

[4]THE COURT: And you're fully aware of all the terms?

MS. BECHTOLD: (No verbal response)

THE COURT: You have to answer for the record.

MS. BECHTOLD: Yes.

THE COURT: And is the settlement agreeable and acceptable to you?

MS. BECHTOLD: Yes, it is.

THE COURT: So, that would take care of Ms. Bechtold, then.

APPENDIX C-8
C-8.4
Transcript, 2/23/90 Hearing

MR. SCHWARTZ: Your Honor, with respect to the sanctions, I'd like to make a brief statement for the record.

THE COURT: Surely.

MR. SCHWARTZ: As you know, the last time this case was on, there was a tremendous amount of acrimony and it didn't look, at that particular time, that this thing was going to be very fruitful. Since that time, we have, I think, made a large measure of progress in that. Now, in respect of the part of this matter, what is left are sanctions against Mr. Garratt. I would ask, on behalf of Mr. Garratt, two things; one, I would ask your Honor to consider reducing the sanctions. The reason I ask that is ask [sic] follows: first, we have already shown, I

[5]think some degree of a (inaudible words) on and an to achieve a global settlement. We have, out of that kind of settlement with respect to Ms. Bechtold. But as far as the other point is concerned, Mr. Ken Morris have [sic] some considerable discussions over the course of the past two weeks. And I have had considerable discussions with Mr. Garratt. Mr. Garratt has indicated that as a method of resolving all of the outstanding matters between Mr. Morris and himself, which would include those which are currently pending in any form and those which could be, so that it would include anything or everything from the beginning of time up to the present, that this all be placed in arbitration. The reason that he suggests that is as follows: number one, now take this matter out of the courts, really, it would be preferable to courts to have to —

THE COURT: Do I have the power to order something into arbitration? I just don't think I do. I've heard this argument before.

MR. MORRIS: No, your Honor.

MR. SCHWARTZ: No, I'm not saying that you're (inaudible words) order, but I'm going against the rationale for my request.

THE COURT: Well, I'm highly in favor of it

[6]though.

MR. SCHWARTZ: I understand that. And what Mr. Morris has proposed —

THE COURT: Just a minute. I don't want to stop you, but — I know it's not a nice thing to do but why don't you refer to him as Ken and Eddie because of the fact there are two Morrises. And whenever you [sic] Mr. Morris or Morris, neither the record nor I really know who you're talking about. So, let's call them Ken and Eddie. Do you gentlemen mind?

MR. MORRIS: Not at all, sir.

MR. MORRIS: Not at all, sir.

MR. SCHWARTZ: I'll call them Ken Morris and Ed Morris.

THE COURT: Okay, either way.

MR. SCHWARTZ: Mr. Garratt has proposed that we just (inaudible words) arbitration. That would take care of everything, including the sanctions that your Honor has indicated are appropriate in this matter, and that all of that will then be able to be resolved. I talked to Mr. Ken Morris and I talked to Mr. Eddie Morris today. They have some problems with that because they feel that this thing could go on forever and ever. They're looking for some other kind of solution which would involve the

[7]disclosures, et cetera. The problem with that is several fold. The part of the problem being that in our last appearance here, when we had a conference in chambers, Mr. Eddie Morris indicated that there were attorney/client privileges involved and that we'd have to have waivers from the clients which he didn't have. That's part of the problem. The basic problem that exist [sic], as we all know, is that there is a deep-seated and deep-rooted lack of trust on both sides. Both between Mr. Eddie Morris and Mr. Garratt and between Mr. Garret [sic] and Mr. Eddie Morris. The arbitration would take care of that because there need be no trust. The other proposal, which Mr. Ken Morris or Eddie Morris may indicate to you, would involve a degree of trust and to that extent probably cannot be achieved, certainly not today. And it might require that

there be an adjournment to achieve that. What I'm suggesting is, that Mr. Garratt has — I think to a certain extent to evidence, they (inaudible words) of conciliation and is looking toward trying to resolve this, and has put forth arbitration as a means by which that may be done. To that extent, your Honor — I would ask your Honor to look at the sanctions that has [sic] been proposed against Mr. Garratt, and consider reducing or eliminating the sanctions. Now, whether they're

[8]reduced or not — on the second point, I would ask that if your Honor is not inclined to totally eliminate the sanctions, that at least — since you have already indicated that you would not entertain a stay, that you at least not make the order effective for 21 days to give this to Garratt, if this cannot be resolved, the opportunity to seek a stay in the Court of Appeals. And I believe the last time you indicated that if he were going to get a stay, that would be the Court of Appeals that they have to get it from. And, at the very least, he should have time with him in which to make that application if your Honor is not inclined to totally eliminate the sanctions. So, that's what I put forth to your Honor.

THE COURT: From what you're saying, I — the record isn't clear, and I'm not 100 percent clear either. But what you say is that there are a lot of other disputes between Eddie Morris and Garratt that should be resolved by this arbitrator other than sanctions?

MR. SCHWARTZ: There are potential disputes which may exist, which have not become the issue of any litigation presently pending. The purpose of this is — I understand from Mr. Ken Morris and from Mr. Eddie Morris that they wish to have a complete wrap up of all

[9]affairs involving Mr. Garratt. Mr. Garratt, we would concur, that he wishes to have a complete wrap up of all affairs concerning Mr. Eddie Morris. And this would be a means by which that could be achieved in such a way that one would not have to rely upon the good faith of the other side.

THE COURT: What kind of arbitration do you have in mind? A one-person arbitrator from the —

MR. SCHWARTZ: No. We were talking about a three-person arbitration. I'll tell you why were [sic] mentioning that. When you have one arbitrator, even though that arbitrator may act in complete good faith, when that arbitrator is gone and issues whatever award it is. Given the history, that I have now become more familiar with since the last time, there is an excellence [sic] chance that the side that doesn't achieve what is desired from their point of view is going to say this one arbitrator was bought off from the other side. Now, what we were looking at, initially, was a three-panel arbitration, three member arbitration panel, where Mr. Eddie Morris could pick one of the arbitrators, Mr. Garratt could pick the other arbitrator, and then the two would then pick a third arbitrator. And in that way, each side would have a full — an equal opportunity to

[10]have input into the arbitration panel. And because of having three arbitrators and having the collegial type of decision making in which proposes in that type of panel, the chances that there might be an extreme decision are certainly reduced tremendously or —

THE COURT: You know, I'm sort of in accord with what you say. My understanding of the law is, that I cannot force that on anybody.

MR. SCHWARTZ: I understand that.

THE COURT: Now, it does sound good to me.

MR. MORRIS: Mr. Kriger is now here.

THE COURT: Good. Hi, Mr. Kriger.

MR. KRIGER: Hello, Judge.

THE COURT: It does sound good to me and I would like to see it. Does Garratt have problems [sic] Ken Morris, other than the sanctions?

MR. SCHWARTZ: Eddie Morris is what you're talking about.

THE COURT: No, that's not what I'm talking about. I'm talking about Ken Morris.

MR. SCHWARTZ: I don't believe that he has any problems with Ken Morris.

THE COURT: So, the arbitration would only be between Eddie Morris and Garratt?

[11]Mr. Schwartz: That's correct, your Honor.

MR. MORRIS: Your Honor, he's proposing something that's been rejected. And I can briefly tell you, your Honor, why it's been rejected. We should just get on to the sanctions motion. It's been rejected because what Garret [sic] wants to do is — I mean, we've talked about if we gave him an evidentiary hearing it would last for weeks. If we give this guy another crack at discovery — we've asked Mr. Schwartz if we don't agree to arbitration, would Garratt agree to limit discovery or no discovery. We don't want to give him another tool to start deposing members of my family and everything else. What we did was, he wore out his welcome out in Oakland Circuit in front of Judge Gage. Judge Gage started to get a handle that the complaint was spurious.

THE COURT: Okay, I don't want to hear any long argument on it. It's something you to have a right [sic] and you're invoking it.

MR. MORRIS: That's right. I do not want to arbitrate because I'm afraid that he will use it.

THE COURT: Suppose that he will agree to arbitration which would not include any discovery. Let me start with that, then I've got some —

[12]MR. MORRIS: Mr. Schwartz has declined that offer.

THE COURT: Now, the other thing is this; no discovery other than what the arbitrators order.

MR. MORRIS: No, your Honor. Let me give you an example. Mr. Garratt is in an arbitration with a former client right now that was supposed to wrapped [sic] up by December 31th [sic]. Sharon Woods at Barris, Sott is the arbitrator. It's still going on. The clients legal fee is over $70,000. The client has been deposed 12

different days by Garratt. I won't agree to put another hammer in this man's hand.

THE COURT: That's not an issue then?

MR. MORRIS: It's not. I want to argue —

THE COURT: Then what is an issue? The only issue is now [sic] the sanctions.

MR. MORRIS: And I want to argue those. I also, your Honor, would like to get the two releases from Mrs. [sic] Bechtold, now that Mr. Kriger is here, and there's an proposed [sic] order. And I'm supposed to be given two of those so I can take them and get signatures. And there's a proposed order for your Honor that we both agree to. I'd like to get that out of the way because I don't want to leave here without having that wrapped up.

[13]THE COURT: All right, Mr. Kriger, I've already interrogated your client as to whether she has settled and whether or not she understands all the consequences and the terms and conditions. And she's indicated that she does. She's also indicated this of her own free will and that it's agreeable — acceptable to her.

MR. KRIGER: And I believe it's in her best interest as we speak.

THE COURT: Okay, so can we get rid of that?

MR. MORRIS: Can we exchange those documents?

MR. SCHWARTZ: All that's happening — I would just like to say, with respect to the arbitration, is to should [sic] have a limit. There's a question to have no discovery at all. I, myself, could not recommend that because I'd be guilty of malpractice.

THE COURT: Of course. But here's the thing, you've discussed it with Mr. Eddie Garratt and he —

MR. SCHWARTZ: With Mr. Morris and —

THE COURT: I'm sorry, with Mr. Eddie Morris. And he says no and I can't order it. I would like to order.

MR. SCHWARTZ: I understand you can't order it. And the only reason we bring this to your Honor's attention is because we think that it does show movement

[14]by Mr. Garratt. So, that in the consideration of a sanctions, that might be a factor that you look at.

THE COURT: I did this. We did discuss the sanctions last time. And my recollect — whether it was on the record or not, I don't remember. But I do remember this, that when these gentlemen asked for dollar sanctions, I do recall this, that I was satisfied that sanctions were in order and I did cut them way down. So, as far as I'm concerned now, the amount of the sanctions are — they're res judicata you to count because everybody had a chance for his input. And I ordered a certain — I cut them way down, primarily because I didn't want to have to have a hearing on every item. And I cut it down so much that if they do come in, they could probably at least make out a prima facie case for substantially more than what the Court ordered. So, I'm not going to reduce them. The only other thing now is a stay. Do you object to a stay?

MR. MORRIS: Yes, your Honor, and I'd like to briefly address that issue, if I may. Your Honor, I know you've indicated — I don't want him to even be given 21 days, your Honor. Also, your Honor, I agree with you that the sanctions issue was widely explored. The one thing that wasn't considered, you issued $11,500 in compensatory sanctions. I've now called to the Court's attention, the *Elliot* case, which was a Court of Appeals case. But I'd also like to call to the Court's attention, *Michigan Bell* versus *SVAT*, 177 Mich App 506 which basically holds that sanctions can't — the term penalties was — applies to sanctions and I'll just say the conclusion. We conclude that MCR 2.114(E) authorizes the imposition of punitive fines and is not limited to actual costs and attorney's fees.

THE COURT: I understand this.

MR. MORRIS: My point of this is, you issued $11,500 out of a potential $33,000 in sanctions, you issued one-third. You also, at the time you made the ruling, used language identical in your rul-

ing. And I've got the 148 page transcript here, identical to *Elliot*, in which the Court said, "I find that this action was vexatious and spiteful." After you said that, you went on and said, "I realize it's substantially less than the claim, but I've got to take into account who's paying these sanctions and what they're [sic] financial status may be." We've now got Elizabeth Bechtold out. The $11,500 did nothing to deter Mr. Garratt from filing a motion for rehearing. And the plaintiff even filed a motion for leave to file a second amended complaint. And what was

[16]incredible about that was, she wanted to amend her pleadings to include Edsel Morris, my father and Donald Piotrowski, even though in this transcript you said there was no possible way that she should have sued them. What I'm saying, your Honor, is that I'm making a pitch because it hasn't obviously affected Mr. Garratt, yet that you at least issue equal sanctions, as the *Elliot* court did. Based on the Michigan court of appeals rule, you can issue equal. You can even issue more. But equal sanctions to the $11,500, you now have affidavits totally 33. I don't want to have to have an evidentiary hearing because it'll take up too much time. The court cases say you don't have to have an evidentiary hearing. I'd like, your Honor, to double the sanctions at least. And that's punitive, it's not compensatory. You're issuing $11,500 compensatory and $11,500 punitive. And that's my pitch. And I'd ask that there not be a stay. One final point, the last time we were here, I asked that Mr. Garret [sic] be here with a check because I wanted — if we weren't going to settle this thing. And he's put things on the records as to the settlement negotiations. Ken Morris — so I should put something on. Ken Morris asked them, "What price would settle it? If you won't pay me twenty, what will you pay; anything?" They won't give us a price.

[17]They say they don't want to settle in the dark. But we've tried to settle too and he just hasn't got the message from this court yet. And I think not only should you deny the stay and you should tell — and I've got an order here denying the stay and asking that I be paid by 4:00 today, but also I think you should issue punitive sanc-

tions in the equal amount. And that hasn't been considered yet, and I ask that it be considered.

MR. SCHWARTZ: You [sic] Honor, Mr. Garratt has really shown some good faith since the last time and part of that is the fact that we've got this settlement, which I think has to be —

THE COURT: You haven't settled. Somebody completely different than Garratt has settled.

MR. SCHWARTZ: You have to recognize, your Honor, that Mr. Eddie Morris stated the last time that Mr. Garratt's persuasive powers over Mr. [sic] Bechtold was instrumental in not being able to settle. If he said it last time, I don't know how he could say that, he was being an obstructionist last time and now not given credit for what's been done. I think that it would be, as a matter of fairness, to give him at least the chance to get a stay in the Court of Appeals, but that it ought to be held for 21 days. It's not a stay as it would be

[18]if your Honor just simply issued a blank stay which would go on until the end of the case. It would just give him the time to seek a stay, which I think is fair. To increase the sanctions at this time, I don't think is wanton by the good faith —

THE COURT: Doesn't he have an automatic 21 days from the time that I originally ordered it?

MR. MORRIS: No, your Honor, your order ruled that he had to pay up by a certain date. And instead of paying it, he filed a motion for a stay. If you deny the stay, he's obligated to pay. And I don't think there's any merit to a stay here. I mean, he's come on with more pleadings rather than less.

MR. SCHWARTZ: (Inaudible words). Not a total stay.

THE COURT: No, but you see, he had time from the original order to go to the Court of Appeals. I'm going to deny the motion.

MR. MORRIS: Your Honor, how about the increase in sanctions?

APPENDIX C-8
C-8.13
Transcript, 2/23/90 Hearing

THE COURT: Well, again, I've got to admit that I sort of think you may be entitled to some punitive sanctions, but I just can't find it in my heart to penalize a lawyer any more. I'm sorry.

[19]MR. KRIGER: Your Honor, I have the orders dismissing —

THE COURT: Right. Okay, give them to the clerk.

MR. MORRIS: Thank you, your Honor.

(Hearing concluded)

APPENDIX C-8
C-8.14
Transcript, 2/23/90 Hearing
[20]REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 19, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Friday, February 23, 1990.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This /s/ 25th day of /s/ May, 1990.

APPENDIX C-9
C-9.1
Transcript, 3/23/90 Hearing

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH BECHTOLD,
Plaintiff,

vs.

Civil Action No.
89-909-989-CZ

EDDIE MORRIS, DONNA PIOTROWSKI, WILLIAM GARRATT, et al.
Defendant. [sic]

MOTION — VOLUME I

Before the Honorable Charles Kaufman, Circuit Judge, on Friday, March 23, 1990, at 1601 City-County Building, Detroit, Michigan.

APPEARANCES:

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Bloomfield Hills, Michigan 48013
Appearing on behalf of the Defendants, Donna Piotrowski and Edsel Morris

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Appearing on behalf of the Defendant, C. William Garratt

[2]TYPED BY:

DAVID A. CUCINELLA
Certified Court Reporter, CSMR-3614

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WITNESS:

None

EXHIBITS:

None

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C-9.3
Transcript, 3/23/90 Hearing

[3]Detroit, Michigan

Friday, March 23, 1990

(At about 11:08 a.m.)

THE COURT: Bechtold versus Morris, 89-909-989.

MR. MORRIS: Ready, your Honor.

MR. SCHWARTZ: Your Honor, Michael Allen [sic] Schwartz appearing on behalf of C. William Garratt.

THE COURT: Did you put your appearance on the record?

MR. MORRIS: E. Michael Morris, your Honor, on behalf of myself, in pro per.

MR. MORRIS: Kenneth J. Morris, your Honor, on behalf of Donna Piotrowski and Edsel Morris.

MR. SCHWARTZ: Your Honor, on March 9th, 1990, this Court made certain rulings from the bench. The purpose of today's proceeding is to enter an order, based upon those pronouncements from the bench. I have an original for your Honor. We've only served copies of this proposed order upon the defendants.

Mr. Garratt has filed a cash bond. I have with me, if your Honor wished to look at it, a receipt from the County Clerk showing that it was filed within the prescribed [sic] by this Court on March 12th, 1990. Mr. Garratt has also timely pursued his appeal, there is a

[4]claim of appeal — I'd like to show that to the Court, also — which he served on the parties and filed with the court on March 16th, 1990.

Based upon that, Mr. Garratt has done everything that your Honor said would be necessary in order to remove these problems with the receiver and the discovery of assets.

Now, the order that we have proposed reflects that. Specifically, it indicates that the supplementary proceedings are going to be barred. Now, there's a reason that have that here. [sic] You may have read the objections of Mr. Morris.

THE COURT: I started to, I didn't finish. Go ahead, I'm listening.

MR. SCHWARTZ: Well, it's interesting reading, but I don't think much of it is relevant to what we have before us today. In as much as there is bond, and that bond has now been filed, if it should come to pass that Mr. Garratt is not successful in his appeals, Mr. Morris now has a source of money from which to satisfy the sanctions. There is no longer any basis for a receiver or for discovery of assets. What Mr. Morris wants is to have that simply stayed until the end of the appellate proceedings, at which point the stay would then dissolve.

[5]Mr. Morris —

THE COURT: The money's available.

MR. SCHWARTZ: But then Mr. Morris would then have a choice of remedies. He could either proceed after the bond or as has been the want in this case, go on with even more problems by then proceeding with the receivership and the discovery of assets. There is no reason for that to occur now that a bond has been posted, and therefore, that should be removed and set aside. And this order calls for that.

Now, Mr. Morris has two points that he makes which we're willing to agree with. Number one, he said that he wanted a time limitation with respect to the part about the stay.

THE COURT: You know, once there's a bond, that's the stay; isn't it? That's my understanding. That stays everything until the Court of Appeals speaks?

MR. SCHWARTZ: That's correct.

THE COURT: So, what's the problem?

MR. SCHWARTZ: The problem you have, your Honor, is this. The reason that the sanctions — the receivership was put into place, is because Mr. Morris said that he needs to get his money. We came before your Honor, your Honor agreed that if we had a bond that would

[6]satisfy it. If the bond remains, that is the source — and it should be the exclusive source, after which Mr. Morris goes. He should not be in a position when he can now go in and say, "Well, the order appointing the receiver, which was stayed, is no longer stayed and therefore, I can elect, at my discretion, to proceed with receivership." That should not be allowed, because that's simply going to create more problems. What we're seeking to do with this order is to avoid that very problem by indicating that that previous order is now set aside, because there's no need for that. Mr. Morris is fully protected with the cash bond that has been posted.

That being the case, that order should not merely be stayed so that it can then be lifted, I guess in the event that something happens in terms of an affirmance, it should just be set aside so that Mr. Morris' exclusive remedy will be simply to go after the —

THE COURT: Why can't we just stay everything? I'm never going to let a receiver do anything if the money's right there to be paid.

MR. SCHWARTZ: Well, this is what we want to be sure of, to make sure that this happens, or for some reason you're not on the bench. What if something should

[7]happen?

THE COURT: It could happen.

MR. SCHWARTZ: We want to make sure that there's — that whoever the judge who comes in is not faced with this entire problem all over again, and you're familiar with this case. Who knows when these appeals may end? I don't have any idea when things may end. I don't know the schedule of the appellate situations as they exist. It could take a long time. In any event, if this should be done, we don't want to have either your Honor or some other judge faced with this entire conopole (ph) of proceedings, which was —

THE COURT: You know, let's assume, arguendo, that it goes up to the Court of Appeals and let's assume that I'm affirmed and the money has to be paid, I can't picture any judge saying, "No, they

don't have to take the money from the bond." I just can't conceive it. You can always do this, you can always say, "Look, there's a judgment here now for $12,000, I want the Court's permission to pay it into court and stop everything." You can do it. I don't understand why we're getting so technical. A stay is a stay is a stay. It doesn't matter what you call it.

MR. SCHWARTZ: The reason we're getting

[8]technical, your Honor, is because, just as Mr. Morris says that he doesn't trust Mr. Garratt and is afraid Mr. Garratt may do things in the future, Mr. Garratt [sic] the same concerns about Mr. Morris. And, as your Honor knows from the proceedings that we've had thus far, each of these people has their own reason to believe that the other one may do something. And this was simply via method by which this problem can be, to some extent, set to rest and start some —

THE COURT: Okay. Mr. Morris, can't we work this out?

MR. MORRIS: Yes, your Honor. I've revised his proposed order. Let me tell you —

THE COURT: Did you show it to him?

MR. MORRIS: Yes, and he won't agree to it. Let me tell you what Garratt's trying to do. What your Honor did that day could have been in a very short order.

THE COURT: That's what I thought.

MR. MORRIS: Right. But you see, what Garratt does, and I know this is Garratt's method, this is Garratt, this is on Garratt's stationary, he comes out with this complex order with all kinds of hookers in here. Now, there's three hookers in here. Let me show them to your Honor.

[9]THE COURT: Go ahead.

MR. MORRIS: The first one is, at the top where I've crossed out, Garratt hereby stays execution of this Court's prior orders.

Transcript, 3/23/90 Hearing

THE COURT: Just a second, I want to be sure I see it. "This Court hereby stays execution."

MR. MORRIS: I've crossed that out. "Of this Court's prior orders." In other words, he was staying execution even of all orders, not just the 3/1/90 order. So that was the first thing. And then he bars, in his next thing which I've crossed out, all supplementary proceedings without a termination date, which means that if the Court of Appeals affirmed, Garratt would wave this order and say, well, he may have affirmed, but you can't execute on the bond, you can't execute on anything, because Judge — so now they say, well, they'll forego, you don't have to bar, so I crossed that out; that's number one.

The second thing Garratt cleverly does in this order is down at the bottom of the page, the last three lines which I've crossed out now, says your March 1, 1990 order shall be deemed to be set aside and held for naught without further order of pronouncement of this Court. Let me tell you why that — you didn't say that. You

[10]said, Garratt, if you come in by sunset on Monday, I'll stay that March 1, 1990 order, if you come in by sunset on Monday with a cash bond. That's what you said. If he didn't post a bond by 5:00 on Monday, then we went back to your March 1 order. The distinction's very important, because after we left the courtroom, Ken Morris and I were out in the elevators with — near the elevators with Garratt and Mr. Schwartz, and Garratt's comment was "Well, you've now put McConnell squarely in front of 900 Marquette."

The Court: What's that?

Mr. Schwartz: That's the address of Plunkett, Cooney.

Mr. Morris: Right. But Mr. Schwartz corrected him and said, "No, the Attorney Grievance Commission is 256 Marquette," and Garratt had to laugh. Garratt repeated it again, "Well your overzealousness has put Mr. McConnell in front of 256 Marquette." He wants you to hold your March 1, 1990 order void and for naught, because apparently he wants to create some argument that

the entry of that order was improper. And I won't stand for it. I've told Mr. McConnell about this. Mr. McConnell didn't do anything as a receiver. He was appointed by the Court. We had case law that backed it

[11]up. But for you to now hold your March 1, 1990 order void and for naught, you didn't say that. You said, Garratt post. So, I've crossed that out, and I don't want any inference that the March 1, 1990 order was improper, because I'm convinced that it wasn't.

MR. SCHWARTZ: That's not what that does, your Honor—

MR. MORRIS: Well, your Honor, can I finish? There's a third point. My third point is, on the last page, I've knocked out, denied without prejudice, because you denied his relief and I don't —

MR. SCHWARTZ: We don't have a problem with that, your Honor.

MR. MORRIS: Okay, so —

MR. SCHWARTZ: We'll take out the words, without prejudice.

MR. MORRIS: But we didn't need this long order, your Honor, and I started to read it when it came in, and I thought, why is he proposing such a long order, and then I started reading it, and he's creating rulings that weren't made. So, the order I've just conformed, if your Honor reads it, is now accurate. It stays things. It doesn't say other things are void or for naught and it's a correct order now.

[12]MR. SCHWARTZ: Your Honor, with respect to this so-called grievance business, I will tell you as a former grievance investigator —

THE COURT: I know you are.

MR. SCHWARTZ: — that there is no way that a lawyer who's been ordered by a judge to be a receiver can be guilty of misconduct for following a judge's order, irrespective of whether or not the judge entered the order properly or improperly. That's just simply

a fact that everybody would know, because if a person follows a judge's order, he's in good faith, period. That's the end of that.

The reason for this, again, if you'll take a look at Mr. Morris' objections, you'll see that the real reason that he does all this is, again, he asks at the end for an increase in the sanctions. He wants to come back to this court again and he says it, and he's got it right over here.

THE COURT: Where?

MR. SCHWARTZ: Page four.

MR. MORRIS: I forgot to address that. I am asking for —

MR. SCHWARTZ: Of course, that's the whole reason he's here.

[13]MR. MORRIS: This the [sic] fifth time I'm here and we've been up to the Court of Appeals and back. And Garratt should have asked for a stay bond when he first came into and proposed an appropriate one. Why do we have to come back here five times, and in the meantime run up to the Court of Appeals and back. I forgot to address that. Thank you, Mr. Schwartz. I'd like sanctions for being here, your Honor.

MR. SCHWARTZ: He couldn't do that, your Honor, because there wasn't a final order at the time. If there be anybody who should have sanctions, your Honor, in this motion, it's not Mr. Morris, that I can guarantee you, the motion that we had is not improper. The setting aside of the receivership is to simply prevent any type of impropriety to occur in the future in the event that there is a judge who may end up with this who doesn't have a —

THE COURT: No, you know what I'm going to do? I want a simple order where I stay all proceedings until the Court of Appeals make a decision. Why can't you do that? That's what I want. Some of this, I agree, is a lot of verbiage that isn't necessary. The very fact that even now, Mr. Schwartz, that you concede this without prejudice is ridiculous.

[14]MR. SCHWARTZ: I don't say it's ridiculous, your Honor.

THE COURT: I say it's ridiculous.

MR. SCHWARTZ: Let me this much [sic] to you, just so that you understand. Mr. Garratt sent Mr. Morris this thing back on Friday, and I've got here a copy of the facts. We sent this to him on Friday, March 16th, and he said to him, he said, "May I please have your concurrence?" Just a moment. This is the paper that he had, we sent over to him. Here's a copy of the fax thing. Mr. Morris refused to answer it. If Mr. Morris had said to him, "Look, here's what I want. Take this." He would have done it. The first time that I saw anything from Mr. Morris, in terms of changing the order, was approximately a half hour ago while we were waiting in this courtroom to be called.

Now, it's not ridiculous. It would be ridiculous if we had had this — had had notice of this before today's proceedings. But the way he's done it over here, he hasn't given us a bit of change until today, and now claims, for some reason, that we should —

MR. MORRIS: Your Honor, may I comment on this? He's had our objections for days. They were filed under the court rules. He knows what the problem is. There

[15]wouldn't even be a bond here, but I did the research myself, picked out the Supreme Court form for the bond, and we had it sent over to his office because he sent us a ridiculous bond. We're not trying to put more time into this case. This whole motion, this order was ridiculous that they proposed.

MR. SCHWARTZ: Your Honor, this objection we've had for days was received by my office yesterday. It was mailed out the day before yesterday. We could not have had it for days when it didn't exist —

THE COURT: I'm not going to order any sanctions now. The next time you come back, there's going to be sanctions against somebody for having to come back.

MR. MORRIS: Fine, your Honor.

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C-9.11
Transcript, 3/23/90 Hearing

THE COURT: You know, the changes that Mr. Eddie Morris made, I think they're fine, I see nothing wrong with them. It specifically talks about what order we're talking about is being stayed. It specifically doesn't say anything about defendant's other objections are granted. I don't know what other objections that I'm granting of any defendant. And I think defendant really is not the proper term. But anyway, it's just not necessary for what this is to do. This is really an

[16]order staying any further proceedings, and that's all I want to do, enter an order staying any further proceedings of any kind.

MR. SCHWARTZ: So the record can be absolutely clear, perhaps we can put in the order that Mr. Morris will not have the ability to proceed with receivership as an election of remedies; that's the prime concern that we've got.

THE COURT: Oh, you know, I can't believe — well, of course, I've seen so many things that I can't believe —

MR. MORRIS: Your Honor, Mr. McConnell didn't act in the ten days he was allowed to act. McConnell —

THE COURT: I'll let you put something in the order that, in the event — listen carefully, in the event that after — in the event that the Court of Appeals affirms this matter, the first satisfaction will be looked at the bond — the bond will be looked to for the first satisfaction, and if that covers it, that'll end it.

MR. MORRIS: I'll have that retyped with that sentence added.

THE COURT: Yeah, put that sentence in. That's a (inaudible words) sentence I just propounded.

[17]MR. SCHWARTZ: You said, if the Court of Appeals if at appellate remedies?

THE COURT: Yes, absolutely, absolutely, because you may want to go to the U.S. Supreme Court before this is over.

MR. SCHWARTZ: I'm not saying that we will.

THE COURT: You might, you might. Appellate remedies, right.

MR. MORRIS: Thank you, your Honor.

MR. SCHWARTZ: Thank you, your Honor.

(Proceedings concluded at about 11:25 a.m.)

APPENDIX C-9
C-9.13
Transcript, 3/23/90 Hearing

[18]REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 17, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Friday, March 23, 1990.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This /s/ 23rd day of /s/ July, 1990.

MICHIGAN COURT RULES OF 1985
RELEVANT RULES AND NOTES

CHAPTER 1. GENERAL PROVISIONS

SUBCHAPTER 1.100 APPLICABILITY; CONSTRUCTION

RULE 1.101 TITLE; CITATION

These rules are the "Michigan Court Rules of 1985". An individual rule may be referred to as "Michigan Court Rule _____", and cited by the symbol "MCR _____". For example, this rule may be cited as MCR 1.101.

Note

* * *

The notes that follow each rule were prepared by the Supreme Court staff to assist the reader in identifying the substantive changes that the rules make from prior Michigan practice. They have not been approved by the Supreme Court, and should not be considered an authoritative construction of the rules.

* * *

RULE 2.110 PLEADINGS

(A) Definition of "Pleading". The term "pleading" includes only:

(1) a complaint,

(2) a cross-claim,

(3) a counterclaim,

(4) a third-party complaint,

(5) an answer to a complaint, cross-claim, counterclaim, or third-party complaint, and

(6) a reply to an answer.

No other form of pleading is allowed.

* * *

RULE 2.113 FORM OF PLEADINGS AND OTHER PAPERS

(A) Applicability. The rules on the form, captioning, signing, and verifying of pleadings apply to all motions, affidavits, and other papers provided for by these rules. However, an affidavit must be verified by oath or affirmation.

* * *

RULE 2.114 SIGNATURES OF ATTORNEYS AND PARTIES; VERIFICATION; EFFECT; SANCTIONS

(A) Verification.

(1) Except when otherwise specifically provided by rule or statute, a pleading need not be verified or accompanied by an affidavit.

(2) If a pleading is required or permitted to be verified, it may be verified by

(a) oath or affirmation of the party or of someone having knowledge of the facts pleaded; or

(b) including the following signed and dated declaration: "I declare that the statements above are true to the best of my information, knowledge, and belief".

In addition to the sanctions provided by subrule (E), a person who knowingly makes a false declaration under subrule (A)(2)(b) may

be found in contempt of court.

(B) Signature Requirement. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the pleading.

(C) Failure to Sign. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader.

(D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the pleading;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(3) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E) Sanctions for Violation. If a pleading is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.

(F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2).

[Amended January 25, 1985; January 31, 1985; amended effective December 12, 1986].

Note

MCR 2.114 covers the subjects of the signing of papers and the sanctions for unwarranted allegations or denials. These provisions, which are based on the recent amendment of FRCivP11, differ considerably from the corresponding provisions in the prior Michigan rules, GCR 1963, 114 and 111.6.

Although the rules uses the term "pleading", it also applies to other papers. See MCR 2.113(A).

Subrule (A) provides that pleadings need not be verified or accompanied by an affidavit in the absence of a specific rule or statute so requiring. However, pleadings must be signed (see subrule [B]), and subrule (D) provides that the signature operates as a certification of the signer's knowledge of the contents of the pleading, of the signer's good faith belief that the pleading is warranted by the law and facts, and that the pleading is not interposed for improper purposes.

When verification is required by statute or rule, subrule (A) permits the verification to be either by oath or affirmation or by signing a declaration like that found in GCR 1963, 114.3. FRCivP 11 does not include such a provision, but a federal statute allows the use of a similar declaration. See 28 USC 1746.

Subrule (E) authorizes the court to impose sanctions for a signature in violation of the rule.

The [January 25, 1985] amendment of MCR 2.114(A)(2)(a) corrects a typographical error, substituting "oath or affirmation" for "oath of affirmation".

APPENDIX E

E-0.1

Papers Filed By Petitioner in the Trial Court on Behalf of Plaintiff

PAPERS FILED BY PETITIONER
IN THE TRIAL COURT
ON BEHALF OF PLAINTIFF

1. Appearance
2. Notice Of Taking Deposition *Duces Tecum*
3. Notice Of Taking Records Deposition
4. First Amended Notice Of Taking Deposition *Duces Tecum*
5. Plaintiff's Response To Defendant Eddie M. Morris' Motion To Compel Discovery And For Entry Of Order and Plaintiff's Request For Sanctions Against Defendant Eddie M. Morris
6. Plaintiff's Emergency Motion: (1) To Strike Defendants' Motion To Dismiss Or, Alternatively, To Adjourn Hearing; (2) To Vacate Portion Of December 1, 1989 Ruling; (3) To Hold Defendant Eddie Morris In Contempt; (4) To Compel Defendants to Provide Discovery; And (5) For Sanctions
7. Plaintiff's Answer to Defendants' Motion For Accelerated Judgment
8. Plaintiff's Supplemental Memorandum In Opposition To Defendants' Motion To Dismiss
9. Affidavits Of Plaintiff, C. William Garratt, Mark D. Evans, Eric J. McCann, Mark W. Hafeli, Kathleen Trepte and Peggy Strutz In Opposition To Defendants' Motions
10. Plaintiff's Response To Defendant Eddie Morris' Motion To Release Funds Allegedly Interpled With Court
11. Affidavits of Stuart Trepte, Kathleen Trepte, Mark D. Evans and Alicia McCully In Opposition To Defendants' Motions
12. Affidavits of Plaintiff's Co-Counsel